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

ARTICLE II
POLLUTION CONTROL

CHAPTER 1
POINT SOURCE POLLUTION CONTROL

PART 31
WATER RESOURCES PROTECTION

324.3101 Definitions.

Sec. 3101. As used in this part:

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

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

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

(*i*) Filtration.

(*ii*) The application of biocides or ultraviolet light.

(*iii*) Thermal methods.

(*iv*) Other treatment techniques approved by the department.

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

(e) "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area from the United States Department of Labor, Bureau of Labor Statistics.

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

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

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

(i) "Group 2 facility" means a facility whose discharge is described by R 323.2210(y), R 323.2215, or R 323.2216 of the Michigan administrative code. Group 2 facility does not include a Group 2a facility.

(j) "Group 2a facility" means a facility whose discharge is described by R 323.2210(y) or R 323.2215 of the Michigan administrative code and that meets 1 or more of the following:

(*i*) The facility's discharge is from a coin-operated laundromat.

(*ii*) The facility's discharge is from a car wash or vehicle wash open to the public.

(*iii*) The facility's discharge is a subsurface sanitary discharge of fewer than 10,000 gallons per day that does not meet the terms for authorization under R 323.2211(a) of the Michigan administrative code.

(*iv*) The facility's discharge is a seasonal sanitary discharge from a public park, public or private recreational vehicle park or campground, or recreational or vacation camp.

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

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

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

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

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

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

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

(r) "Open water disposal of contaminated dredge materials" means the placement of dredge materials

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contaminated with toxic substances as defined in R 323.1205 of the Michigan administrative code into the open waters of the waters of the state but does not include the siting or use of a confined disposal facility designated by the United States Army Corps of Engineers or beach nourishment activities utilizing uncontaminated materials.

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

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

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

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

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

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

(y) "St. Lawrence waterway" means the St. Lawrence River, the St. Lawrence Seaway, and the Gulf of St. Lawrence.

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1997, Act 29, Imd. Eff. June 18, 1997;—Am. 2001, Act 114, Imd. Eff. Aug. 6, 2001;—Am. 2004, Act 90, Imd. Eff. Apr. 22, 2004;—Am. 2004, Act 142, Imd. Eff. June 15, 2004;—Am. 2006, Act 97, Imd. Eff. Apr. 4, 2006;—Am. 2015, Act 247, Imd. Eff. Dec. 22, 2015.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.3102 Implementation of part.

Sec. 3102. The director shall implement this part.

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

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

For transfer of authority, powers, duties, functions, and responsibilities of the Surface Water Quality Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For transfer of the Office of Administrative Hearings, including but not limited to authority, powers, duties, functions, and responsibilities, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

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

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

(2) The department shall enforce this part and may promulgate rules as it considers necessary to carry out

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its duties under this part. However, notwithstanding any rule-promulgation authority that is provided in this part, except for rules authorized under section 3112(6), the department shall not promulgate any additional rules under this part after December 31, 2006.

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

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

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

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For transfer of authority, powers, duties, functions, and responsibilities of the Surface Water Quality Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the Michigan Compiled Laws.

For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 323.1001 et seq. and R 323.2101 et seq. of the Michigan Administrative Code.

324.3103a Legislative findings; duties of department; vessel owner or operator ineligible for new grant, loan, or award.

Sec. 3103a. (1) The legislature finds both of the following:

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

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

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

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

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

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

(d) Determine the following:

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

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

(*iii*) If the department determines under subparagraph (*i*) that a ballast water treatment method is not available, the actions needed to be taken for 1 or more ballast water treatment methods that would meet the

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requirements of subparagraph (*i*) to be developed, tested, and made available to vessel owners and operators and a time period after which the ballast water treatment method or methods could be used by all oceangoing vessels operating on the Great Lakes. Subsequently, if at any time the department determines that 1 or more ballast water treatment methods that meet the requirements of subparagraph (*i*) could be used by oceangoing vessels operating on the Great Lakes, the department shall determine a date after which the ballast water treatment method or methods could be used by all oceangoing vessels operating on the Great Lakes.

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

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

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

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

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

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

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

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

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

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

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

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

History: Add. 2001, Act 114, Imd. Eff. Aug. 6, 2001.

Popular name: Act 451

Popular name: NREPA

324.3104 Cooperation and negotiation with other governments as to water resources; alteration of watercourses; federal assistance; formation of Great Lakes aquatic nuisance species coalition; report; requests for appropriations; recommendations; permit to alter floodplain; application; fees; disposition of fees; other parts subject to single highest permit fee.

Sec. 3104. (1) The department is designated the state agency to cooperate and negotiate with other

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governments, governmental units, and governmental agencies in matters concerning the water resources of the state, including, but not limited to, flood control, beach erosion control, water quality control planning, development, and management, and the control of aquatic nuisance species. The department shall have control over the alterations of natural or present watercourses of all rivers and streams in this state to assure that the channels and the portions of the floodplains that are the floodways are not inhabited and are kept free and clear of interference or obstruction that will cause any undue restriction of the capacity of the floodway. The department may take steps as may be necessary to take advantage of any act of congress that may be of assistance in carrying out the purposes of this part, including the water resources planning act, 42 USC 1962 to 1962d-3, and the federal water pollution control act, 33 USC 1251 to 1387.

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

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

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

(5) Except as provided in subsections (6), (7), and (9), until October 1, 2019, an application for a floodplain permit shall be accompanied by a fee of $500.00. Until October 1, 2019, if the department determines that engineering computations are required to assess the impact of a proposed floodplain alteration on flood stage or discharge characteristics, the department shall assess the applicant an additional $1,500.00 to cover the department's cost of review.

(6) Until October 1, 2019, an application for a floodplain permit for a minor project category shall be accompanied by a fee of $100.00. Minor project categories shall be established by rule and shall include activities and projects that are similar in nature and have minimal potential for causing harmful interference.

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

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

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

(a) Part 301.

(b) Part 303.

(c) Part 323.

(d) Part 325.

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 169, Imd. Eff. Oct. 9, 1995;—Am. 1999, Act 106, Imd. Eff. July 7, 1999;—Am. 2003, Act 163, Imd. Eff. Aug. 12, 2003;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2005, Act 33, Imd. Eff. June 6, 2005;—Am. 2008, Act 276, Imd. Eff. Sept. 29, 2008;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2015, Act 82, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 323.1001 et seq. of the Michigan Administrative Code.

324.3105 Entering property for inspections and investigations; assistance.

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

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

Popular name: Act 451

Popular name: NREPA

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

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

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

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 323.1001 et seq. and R 323.2101 et seq. of the Michigan Administrative Code.

324.3106a Satisfaction of remedial obligations.

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

History: Add. 1995, Act 15, Imd. Eff. Apr. 12, 1995.

Popular name: Act 451

Popular name: NREPA

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

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

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

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 323.1001 et seq. of the Michigan Administrative Code.

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

Sec. 3108. (1) A person shall not occupy or permit the occupation of land for residential, commercial, or industrial purposes or fill or grade or permit the filling or grading for a purpose other than agricultural of land in a floodplain, stream bed, or channel of a stream, as ascertained and determined for the record by the department, or undertake or engage in an activity on or with respect to land that is determined by the department to interfere harmfully with the discharge or stage characteristics of a stream, unless the occupation, filling, grading, or other activity is permitted under this part.

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

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

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

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

(3) If the community within which a building described in subsection (2) is located is a participant in the national flood insurance program authorized under the national flood insurance act of 1968, title XIII of the housing and urban development act of 1968, Public Law 90-448, 82 Stat. 572, 42 U.S.C. 4001, 4011 to 4012, 4013 to 4020, 4022 to 4102, 4104 to 4104d, 4121 to 4127, and 4129, then the developer shall apply for and obtain a letter of map revision, based on fill, from the federal emergency management agency prior to the issuance of a local building permit or the construction of the building if 1 or both of the following apply:

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

(b) The watercourse is relocated or enclosed.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 162, Imd. Eff. Apr. 11, 1996.

Popular name: Act 451

Popular name: NREPA

324.3109 Discharge into state waters; prohibitions; exception; violation; penalties; abatement; "on-site wastewater treatment system" defined.

Sec. 3109. (1) A person shall not directly or indirectly discharge into the waters of the state a substance that is or may become injurious to any of the following:

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

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

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

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

(e) To the value of fish and game.

(2) The discharge of any raw sewage of human origin, directly or indirectly, into any of the waters of the state shall be considered prima facie evidence of a violation of this part by the municipality in which the discharge originated unless the discharge is permitted by an order or rule of the department. If the discharge is not the subject of a valid permit issued by the department, a municipality responsible for the discharge may be subject to the remedies provided in section 3115. If the discharge is the subject of a valid permit issued by the department pursuant to section 3112, and is in violation of that permit, a municipality responsible for the discharge is subject to the penalties prescribed in section 3115.

(3) Notwithstanding subsection (2), a municipality is not responsible or subject to the remedies or penalties provided in section 3115 under either of the following circumstances:

(a) The discharge is an unauthorized discharge from a sewerage system as defined in section 4101 that is permitted under this part and owned by a party other than the municipality, unless the municipality has accepted responsibility in writing for the sewerage system and, with respect to the civil fine and penalty under section 3115, the municipality has been notified in writing by the department of its responsibility for the sewerage system.

(b) The discharge is from 3 or fewer on-site wastewater treatment systems.

(4) Unless authorized by a permit, order, or rule of the department, the discharge into the waters of this state of any medical waste, as defined in part 138 of the public health code, 1978 PA 368, MCL 333.13801 to 333.13832, is prima facie evidence of a violation of this part and subjects the responsible person to the penalties prescribed in section 3115.

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

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

(7) As used in this section, "on-site wastewater treatment system" means a system of components, other

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than a sewerage system as defined in section 4101, used to collect and treat sanitary sewage or domestic equivalent wastewater from 1 or more dwellings, buildings, or structures and discharge the resulting effluent to a soil dispersal system on property owned by or under the control of the same individual or entity that owns or controls the dwellings, buildings, or structures.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2005, Act 32, Eff. Jan. 1, 2007;—Am. 2005, Act 241, Imd. Eff. Nov. 22, 2005;—Am. 2014, Act 536, Imd. Eff. Jan 15, 2015.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 323.1001 et seq. of the Michigan Administrative Code.

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

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

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

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

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

(3) As used in this section:

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

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

History: Add. 1995, Act 70, Imd. Eff. June 5, 1995;—Am. 1999, Act 106, Imd. Eff. July 7, 1999.

Popular name: Act 451

Popular name: NREPA

324.3109b Satisfaction of remedial obligations.

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

History: Add. 1995, Act 70, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: NREPA

324.3109c Open water disposal of dredge materials contaminated with toxic substances; prohibition.

Sec. 3109c. Notwithstanding any other provision of this part or the rules promulgated under this part, the open water disposal of dredge materials that are contaminated with toxic substances as defined in R 323.1205 of the Michigan administrative code is prohibited.

History: Add. 2006, Act 97, Imd. Eff. Apr. 4, 2006;—Am. 2013, Act 87, Imd. Eff. June 28, 2013.

Popular name: Act 451

Popular name: NREPA

324.3109d MAEAP-verified farms; applicable conditions; obligation to obtain permit not modified or limited; definitions.

Sec. 3109d. (1) Beginning 6 months after the effective date of the amendatory act that added this section, notwithstanding any other provision of this part, the following apply to MAEAP-verified farms:

(a) Except as provided in subdivision (b), if all of the following conditions are met, the owner or operator of the MAEAP-verified farm is not subject to civil fines under section 3115, but may be responsible for actual natural resources damages:

(*i*) A discharge to the waters of the state occurs from a portion or operation of the farm that is

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MAEAP-verified and in compliance with MAEAP standards.

(*ii*) The owner or operator acted promptly to correct the condition after discovery.

(*iii*) The owner or operator reported the discharge to the department within 24 hours of the discovery.

(b) Subdivision (a) does not apply if either of the following conditions occurs:

(*i*) The actions of the owner or operator pose or posed a substantial endangerment to the public health, safety, or welfare.

(*ii*) The director, upon advice from the interagency technical review panel provided for in section 8710, determines the owner or operator has previously committed significant violations that constitute a pattern of repeated violations of environmental laws, rules, regulations, permit conditions, settlement agreements, or orders of consent or judicial orders and that were due to separate and distinct events.

(c) If a MAEAP-verified farm is in compliance with all MAEAP standards applicable to the farming operation, the farm is considered to be implementing conservation and management practices needed to meet total maximum daily load implementation for impaired waters pursuant to 33 USC 1313.

(d) If a discharge from a MAEAP-verified farm that is in compliance with all MAEAP standards applicable to land application is caused by an act of God weather event, both of the following apply:

(*i*) The discharge shall be considered nonpoint source pollution.

(*ii*) If the discharge is determined by the director with scientific evidence provided by water quality data to have caused an exceedance of water quality standards, the farm, within 30 days of notification, shall provide to the department a report that includes details of conservation or management practice changes, if necessary, to further address the risk of discharge recurrence. The report shall state whether those conservation or management practices have already been implemented by the farm. Upon receipt of the report, the department shall review the report and respond within 30 days. The departmental response may include report acceptance with no further action required or may recommend environmentally sound and economically feasible conservation or management practices to prevent future discharges.

(2) This section does not modify or limit any obligation to obtain a permit under this part.

(3) As used in this section:

(a) "Act of God weather event" means a precipitation event that meets both of the following conditions:

(*i*) Exceeds 1/2 inch in precipitation.

(*ii*) Was forecast by the national weather service 24 hours earlier as having less than a 70% probability of exceeding 1/2 inch of precipitation.

(b) "MAEAP-verified farm" means that term as it is defined in part 87.

History: Add. 2011, Act 1, Imd. Eff. Mar. 9, 2011.

Popular name: Act 451

Popular name: NREPA

324.3109e Sodium or chloride in groundwater discharge permit; limitation; discharge of sodium or chloride causing groundwater concentration exceeding certain levels; duties of permittee; response activities.

Sec. 3109e. (1) Notwithstanding any other provision in this act or the rules promulgated under this act, the department shall not establish or enforce a limitation for sodium or chloride in a groundwater discharge permit that is more restrictive than the following:

(a) 400 milligrams of sodium per liter.

(b) 500 milligrams of chloride per liter.

(2) Notwithstanding any other provision of this act or the rules promulgated under this act, the department shall not establish or enforce a limitation for sodium or chloride in groundwater that is more restrictive than the following:

(a) 230 milligrams of sodium per liter.

(b) 250 milligrams of chloride per liter.

(3) Notwithstanding any other provision of this part or rules promulgated under this part, if a permittee discharges sodium or chloride, or both, into groundwater that migrates off of the property on which the discharge was made and that discharge directly causes the groundwater concentration of sodium or chloride, or both, to exceed the levels provided under subsection (2), the permittee shall do all of the following:

(a) Initiate a sampling program approved by the department to monitor downgradient water supply wells for the levels of sodium or chloride, or both, in the water supply.

(b) If the concentration of sodium in a downgradient water supply exceeds the level provided under subsection (2), the permittee shall provide and maintain, for each affected downgradient water supply, free of charge, a point-of-use treatment system approved by the department that will remove sodium from the water

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supply so as to be in compliance with the level provided under subsection (2).

(c) If the concentration of chloride in a downgradient water supply exceeds the level provided under subsection (2), provide to each affected water supply owner a notice of aesthetic impact with respect to chloride levels.

(4) Notwithstanding any other provision of this act, a permittee subject to the requirements of subsection (3) that complies with the requirements of subsection (3) is not subject to response activities under part 201 with respect to a discharge of sodium or chloride, or both, that is in compliance with the discharge level under subsection (1).

History: Add. 2013, Act 180, Imd. Eff. Nov. 26, 2013.

Popular name: Act 451

Popular name: NREPA

324.3110 Waste treatment facilities of industrial or commercial entity; exception; examination and certification of supervisory personnel; training program; fees; failure to pay fee; continuing education programs; reports; false statement; applicability of section.

Sec. 3110. (1) Each industrial or commercial entity, other than a concentrated animal feed operation, that discharges liquid wastes into any surface water or groundwater or underground or on the ground other than through a public sanitary sewer shall have waste treatment or control facilities under the specific supervision and control of persons who have been certified by the department as properly qualified to operate the facilities. The department shall examine all supervisory personnel having supervision and control of the facilities, other than a concentrated animal feed operation, and certify that the persons are properly qualified to operate or supervise the facilities.

(2) The department may conduct a program for training persons seeking to be certified as operators or supervisors under subsection (1), section 4104, or section 9 of the safe drinking water act, 1976 PA 399, MCL 325.1009. Until October 1, 2017, the department may charge a fee based on the costs to the department of operating this training program. The fees shall be deposited into the operator training and certification fund created in section 3134.

(3) The department shall administer certification operator programs for persons seeking to be certified as operators or supervisors under subsection (1), section 4104, or section 9 of the safe drinking water act, 1976 PA 399, MCL 325.1009. A person wishing to become certified as an operator or a supervisor shall submit an application to the department containing information required by the department. Information submitted as part of the application shall be considered part of the examination for certification. Until October 1, 2017, the department may charge a certification examination fee and a certification renewal fee in accordance with the following fee schedule:

(a) For certification examinations under subsection (1), the following fees apply:

(*i*) Industrial wastewater certification level 1 or 2 examination as described under subrule (2) of R 323.1253 of the Michigan administrative code, $35.00.

(*ii*) Industrial wastewater certification level 3 examination as described under subrule (2) of R 323.1253 of the Michigan administrative code, $40.00.

(*iii*) Industrial wastewater special classification A-1a examination or noncontact cooling water A-1h examination as described under subrule (2) of R 323.1253 of the Michigan administrative code, $30.00.

(*iv*) Storm water industrial certification A-1i examination as described under subrule (2) of R 323.1253 of the Michigan administrative code, $30.00.

(b) For certification examinations under section 4104, the following fees apply:

(*i*) Municipal wastewater certification level A, B, C, or D examination as described under subrule (1) of R 299.2911 of the Michigan administrative code, $70.00.

(*ii*) Municipal wastewater certification level L2 examination as described under subrule (3a) of R 299.2911 of the Michigan administrative code, $45.00.

(*iii*) Municipal wastewater certification level L1 examination as described under subrule (3b) of R 299.2911 of the Michigan administrative code, $45.00.

(*iv*) Municipal wastewater certification level SC examination as described under subrule (4) of R 299.2911 of the Michigan administrative code, $45.00.

(c) For certification examinations under section 9 of the safe drinking water act, 1976 PA 399, MCL 325.1009, the following fees apply:

(*i*) Drinking water complete treatment certification level 1, 2, 3, or 4 examination as described under subrule (1) of R 325.11901 of the Michigan administrative code, $70.00.

(*ii*) Drinking water limited treatment certification level 1, 2, 3, or 4 examination as described under subrule

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(2) of R 325.11901 of the Michigan administrative code, $70.00.

(*iii*) Drinking water distribution certification level 1, 2, 3, or 4 examination as described under R 325.11902 of the Michigan administrative code, $70.00.

(*iv*) Drinking water complete treatment certification level 5 examination as described under subrule (1) of R 325.11901 of the Michigan administrative code, $45.00.

(*v*) Drinking water limited treatment certification level 5 examination as described under subrule (2) of R 325.11901 of the Michigan administrative code, $45.00.

(*vi*) Drinking water distribution certification level 5 examination as described under R 325.11902 of the Michigan administrative code, $45.00.

(d) For certification renewals under subsection (1), the following fees apply:

(*i*) Storm water industrial certification A-1i as described under subrule (2) of R 323.1253 of the Michigan administrative code, $95.00.

(*ii*) Storm water construction certification A-1j as described under subrule (2) of R 323.1253 of the Michigan administrative code, $95.00.

(*iii*) All other industrial wastewater certification levels 1, 2, or 3 as described under subrule (2) of R 323.1253 of the Michigan administrative code and issued on a single certificate, $95.00.

(e) For certification renewals under section 4104 for all municipal wastewater certification levels as described under R 299.2911 of the Michigan administrative code and issued on a single certificate, $95.00.

(f) For certification renewals under section 9 of the safe drinking water act, 1976 PA 399, MCL 325.1009, for all drinking water certification levels as described under R 325.11901 or R 325.11902 and issued on a single certificate, $95.00.

(4) The failure to pay a required certification examination fee within 90 days after taking an examination shall constitute failure of the examination. The department shall not allow an individual to take a future examination within the failed examination program unless he or she pays the prior fee in full.

(5) The department shall conduct a program for persons or organizations seeking to offer approved continuing education courses to be used by certified operators and supervisors when renewing their certifications under subsection (1), section 4104, and section 9 of the safe drinking water act, 1976 PA 399, MCL 325.1009. The department may charge continuing education providers a course application fee and course renewal fee in accordance with the following fee schedule:

(a) An application for approval of a training course, $75.00 for each course.

(b) An application for renewal of an approved training course, $50.00 for each course.

(6) All fees collected under this section shall be deposited in the operator training and certification fund established in section 3134.

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 148, Imd. Eff. Sept. 21, 2011.

Popular name: Act 451

Popular name: NREPA

324.3111 Repealed. 2012, Act 43, Imd. Eff. Mar. 6, 2012.

Compiler's note: The repealed section pertained to requirements for filing of report by person doing business with state who discharges wastewater into waters of the state or sewer system.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 299.9001 et seq. of the Michigan Administrative Code.

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

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

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

(3) If the department of state police or other state agency receives notification, pursuant to an agreement with or the laws of another state, Canada, or the province of Ontario, of the release in that other jurisdiction of a polluting material in excess of the threshold reporting quantity and if the polluting material has entered or may enter surface waters or groundwaters of this state, the department of state police or other state agency shall contact the primary public safety answering point serving each county that may be affected by the release.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: Add. 2004, Act 142, Imd. Eff. June 15, 2004.

Popular name: Act 451

Popular name: NREPA

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

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

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

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within the applicable time period. If the department does not make a determination as to whether the application is complete within the applicable time period, the application shall be considered to be complete.

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

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

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

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

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

Popular name: Act 451

Popular name: NREPA

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

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

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

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

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

(*ii*) The reason for the discharge.

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

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

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

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

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

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

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

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

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

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

(9) As used in this section:

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

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

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

(*iii*) Is found on the ground surface.

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

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

(*i*) The Great Lakes and their connecting waters.

(*ii*) Inland lakes.

(*iii*) Rivers.

(*iv*) Streams.

(*v*) Impoundments.

(*vi*) Open drains.

(*vii*) Other surface bodies of water.

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

Popular name: Act 451

Popular name: NREPA

324.3112b Discharge from combined sewer system; issuance or renewal of permit; disconnection of eaves troughs and downspouts as condition; exception; “combined sewer system” defined.

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

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

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

History: Add. 1998, Act 4, Imd. Eff. Jan. 30, 1998.

Popular name: Act 451

Popular name: NREPA

324.3112c Discharges of untreated or partially treated sewage from sewer systems; list of occurrences; “partially treated sewage” and “sewer system” defined.

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

(a) The entity responsible for the discharge.

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

(c) The volume and quality of the discharge.

(d) The time the discharge began and ended.

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

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

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

(2) As used in this section:

(a) “Partially treated sewage” means any sewage, sewage and storm water, or sewage and wastewater, from domestic or industrial sources that is not treated to national secondary treatment standards for wastewater or that is treated to a level less than that required by a national pollutant discharge elimination system permit.

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

History: Add. 2000, Act 287, Imd. Eff. July 10, 2000.

Popular name: Act 451

Popular name: NREPA

324.3112e Permit not required; "beneficial use by-product" and "beneficial use 3" defined.

Sec. 3112e. (1) Notwithstanding sections 3112 and 3113, a permit is not required under this part for any of the following:

(a) The use of a beneficial use by-product for beneficial use 3 in compliance with part 115.

(b) The storage of a beneficial use by-product in compliance with part 115.

(2) As used in subsection (1), "beneficial use by-product" and "beneficial use 3" mean those terms as defined in section 11502.

History: Add. 2014, Act 178, Eff. Sept. 16, 2014.

Popular name: Act 451

Popular name: NREPA

324.3113 New or increased use of waters for sewage or other waste disposal purposes; filing information; permit; conditions; complaint; petition; contested case hearing; rejection of petition.

Sec. 3113. (1) A person who seeks a new or increased use of the waters of the state for sewage or other

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waste disposal purposes shall file with the department an application setting forth the information required by the department, including the nature of the enterprise or development contemplated, the amount of water required to be used, its source, the proposed point of discharge of the wastes into the waters of the state, the estimated amount to be discharged, and a statement setting forth the expected bacterial, physical, chemical, and other known characteristics of the wastes.

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 91, Imd. Eff. Apr. 22, 2004.

Popular name: Act 451

Popular name: NREPA

324.3114 Enforcement of part; criminal complaint.

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

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

Popular name: Act 451

Popular name: NREPA

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

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

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

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

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

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

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effluent is in conformance with and obedient to a rule, order, or permit of the department. In addition to a fine, the attorney general may file a civil suit in a court of competent jurisdiction to recover the full value of the injuries done to the natural resources of the state and the costs of surveillance and enforcement by the state resulting from the violation.

(3) Upon a finding by the court that the actions of a civil defendant pose or posed a substantial endangerment to the public health, safety, or welfare, the court shall impose, in addition to the sanctions set forth in subsection (1), a fine of not less than $500,000.00 and not more than $5,000,000.00.

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

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

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

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

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

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

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

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

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

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

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

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

Popular name: Act 451

Popular name: NREPA

324.3115a Violation as misdemeanor; penalty; “minor offense” defined.

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

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

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

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

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

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

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

Popular name: Act 451

Popular name: NREPA

324.3116 Construction of part.

Sec. 3116. This part does not repeal any law governing the pollution of lakes and streams, but shall be held and construed as ancillary to and supplementing the other laws and in addition to the laws now in force,

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except as a law may be in direct conflict with this part. This part does not apply to copper or iron mining operations, whereby such operations result in the placement, removal, use, or processing of copper or iron mineral tailings or copper or iron mineral deposits from such operations being placed in inland waters on bottomlands owned by or under the control of the mining company and only water which may contain a minimal amount of residue as determined by the department resulting from such placement, removal, use, or processing being allowed or permitted to escape into public waters. This part does not apply to the discharge of water from underground iron or copper mining operations subject to a determination by the department.

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

Popular name: Act 451

Popular name: NREPA

324.3117 Supplemental construction.

Sec. 3117. This part is supplemental to and in addition to the drain code of 1956, Act No. 40 of the Public Acts of 1956, being sections 280.1 to 280.630 of the Michigan Compiled Laws. This part does not amend or repeal any law of the state relating to the public service commission, the department, and the department of public health relating to waters and water structures, or any act or parts of acts not inconsistent with this part.

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

Popular name: Act 451

Popular name: NREPA

324.3118 Storm water discharge fees.

Sec. 3118. (1) Except as otherwise provided in this section, until October 1, 2019, the department shall collect storm water discharge fees from persons who apply for or have been issued storm water discharge permits as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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from a municipality that does not own or operate a separate storm sewer system.

(3) Permit fees required under this section are nonrefundable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 169, Imd. Eff. Oct. 9, 1995;—Am. 1999, Act 35, Imd. Eff. June 3, 1999 ;—Am. 2004, Act 91, Imd. Eff. Apr. 22, 2004;—Am. 2008, Act 2, Imd. Eff. Jan. 16, 2008;—Am. 2009, Act 102, Imd. Eff. Sept. 30, 2009 ;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2015, Act 82, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.3119 Storm water fund.

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

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

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

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

(a) Review of storm water permit applications.

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

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

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

(e) Enforcement against storm water permit violations.

(f) Classification of storm water control facilities.

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

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

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

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

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

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

(*i*) Permit issuance and development.

(*ii*) Compliance.

(*iii*) Enforcement.

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

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

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

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

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

(g) The average number of days required for review of a permit from the date the permit application is

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determined to be administratively complete.

(h) The number of permit applications denied.

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

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

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

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

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

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

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

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

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

Popular name: Act 451

Popular name: NREPA

324.3120 New, reissued, or modified permit fees; new or increased use permit; grant or denial of permit; failure to make decision within applicable time period; annual permit fees; definitions.

Sec. 3120. (1) Until October 1, 2019, an application for a new permit, a reissuance of a permit, or a modification of an existing permit under this part authorizing a discharge into surface water, other than a storm water discharge, shall be accompanied by an application fee as follows:

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

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

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

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

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

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

(5) Until October 1, 2019, a person who receives a permit under this part authorizing a discharge into surface water, other than a stormwater discharge, is subject to an annual permit fee as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) As used in this section:

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

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

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

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

(e) "EPA major facility" means a facility that is designated by the United States Environmental Protection

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Agency as being a major facility under 40 CFR 122.2.

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

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

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

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

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

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

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

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

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

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

History: Add. 2004, Act 91, Imd. Eff. Apr. 22, 2004;—Am. 2009, Act 102, Imd. Eff. Sept. 30, 2009;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2015, Act 82, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.3121 National pollutant discharge elimination system fund.

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

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

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

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

(a) Water quality standards development and maintenance.

(b) Permit development and issuance.

(c) Maintenance of program data.

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

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

(f) Laboratory services.

(g) Enforcement.

(h) Program administration activities.

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

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

(*i*) Permit issuance and development.

(*ii*) Compliance.

(*iii*) Enforcement.

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

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

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

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(e) The number of permit applications denied.

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

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

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

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

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

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

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

(6) As used in this section:

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

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

History: Add. 2004, Act 91, Imd. Eff. Apr. 22, 2004.

Popular name: Act 451

Popular name: NREPA

324.3122 Annual groundwater discharge permit fee; failure of department to grant or deny within certain time period; payment of fee by municipality; definitions.

Sec. 3122. (1) Until September 30, 2019, the department may levy and collect an annual groundwater discharge permit fee from facilities or municipalities that discharge wastewater to the ground or groundwater of this state pursuant to section 3112. The fee shall be as follows:

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

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

(c) For a group 2a facility, $250.00.

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

(2) Within 180 days after receipt of a complete application for a permit to discharge wastewater to the ground or to groundwater, the department shall either grant or deny a permit, unless the applicant and the department agree to extend this time period. If the department fails to make a decision on an application within the time period specified or agreed to under this subsection, an applicant subject to an annual groundwater discharge permit fee shall receive a 15% annual discount on the annual groundwater discharge permit fee.

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

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

History: Add. 2004, Act 90, Imd. Eff. Apr. 22, 2004;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2015, Act 82, Eff. Oct. 1, 2015;—Am. 2015, Act 247, Imd. Eff. Dec. 22, 2015.

Popular name: Act 451

Popular name: NREPA

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

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

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

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

History: Add. 2004, Act 114, Imd. Eff. May 21, 2004.

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Popular name: Act 451

Popular name: NREPA

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

Sec. 3123. (1) The department shall send invoices for the groundwater discharge permit fees under section 3122 to all permit holders by January 15 of each year. Fees will be charged for all facilities authorized as of December 15 of each calendar year. Payment shall be postmarked no later than March 1 of each year. Failure by the department to send an invoice by the deadline, or failure of a person to receive an invoice, does not relieve that person of his or her obligation to pay the annual groundwater discharge permit fee. If the department does not meet the January 15 deadline for sending invoices, the annual groundwater discharge permit fee is due not later than 45 days after receiving an invoice. The department shall forward money collected pursuant to this section to the state treasurer for deposit into the groundwater discharge permit fund established under section 3124.

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

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

History: Add. 2004, Act 90, Imd. Eff. Apr. 22, 2004.

Popular name: Act 451

Popular name: NREPA

324.3124 Groundwater discharge permit fund.

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

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

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

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

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

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

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

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

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

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

(f) The number of violation letters sent.

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

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

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

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

History: Add. 2004, Act 90, Imd. Eff. Apr. 22, 2004.

Popular name: Act 451

Popular name: NREPA

324.3131 Land application of sewage sludge and derivatives; rules; applicability to bulk biosolids or bulk derivative; definitions.

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

(2) Notwithstanding R 323.2407(3) of the Michigan administrative code, the requirements of R 323.2408 and R 323.2410 of the Michigan administrative code in effect on the effective date of the 2012 amendatory act that added this subsection, or subsequent revisions of those requirements, do not apply to bulk biosolids or a bulk derivative that is sold or given away if all of the following requirements are met:

(a) The material is finished compost or other material that has been demonstrated to be mature and stable and to present minimal vector attraction and potential to generate a nuisance.

(b) The material is of exceptional quality.

(c) The generator or distributor provides to the person receiving the material a written record that contains all of the following information:

(*i*) The name and address of the person who prepared the material.

(*ii*) General handling guidelines and recommended application rates.

(*iii*) A current monitoring summary of nitrogen, phosphorus, and potassium concentrations.

(d) The material is used beneficially for its nutrient value in accordance with the generator's approved residuals management program.

(e) The material is utilized only for landscaping uses at 1 or more of the following locations:

(*i*) A public park.

(*ii*) An athletic field.

(*iii*) A cemetery.

(*iv*) A plant nursery.

(*v*) A turf farm.

(*vi*) A golf course.

(*vii*) A lawn.

(*viii*) A home garden.

(*ix*) Any other location approved by the director of the department or his or her designee.

(3) The requirements of R 323.2413(2)(a) through (c) and (e) through (i) of the Michigan administrative code in effect on the effective date of the 2012 amendatory act that added this subsection do not apply to bulk biosolids or a bulk derivative of exceptional quality utilized for landscaping purposes.

(4) A person who generates bulk biosolids or a bulk derivative of exceptional quality for landscaping uses shall keep a record of quantities in excess of 20 cubic yards sold or given away in a single transaction and make the record available to the department for inspection and copying. The record shall include all of the following information:

(a) The name and address of the recipient.

(b) The quantity received.

(c) The signature or initials of the recipient.

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(d) A general description of the intended use consistent with subsection (2)(e).

(5) As used in this section:

(a) All of the following mean those terms as defined in R 324.2402 of the Michigan administrative code:

(*i*) "Bulk biosolids".

(*ii*) "Derivative".

(*iii*) "Exceptional quality".

(*iv*) "Generator".

(*v*) "Residuals management program".

(b) "Bulk derivative" means a derivative that is not sold or given away in a bag or other container for application to a lawn or home garden.

History: Add. 1997, Act 29, Imd. Eff. June 18, 1997;—Am. 2012, Act 563, Imd. Eff. Jan. 2, 2013.

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

Popular name: Act 451

Popular name: NREPA

324.3132 Sewage sludge generators and sewage sludge distributors; fees; report; sewage sludge land application fund; local ordinance.

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

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

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

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

(5) The sewage sludge land application fund is created in the state treasury. The department of environmental quality shall forward all fees collected under this section to the state treasurer for deposit into the fund. The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. An unexpended balance within the fund at the close of the state fiscal year shall be carried forward to the following state fiscal year. The fund shall be allocated solely for the administration of this section and sections 3131 and 3133, including, but not limited to, education of the farmers, sewage sludge generators, sewage sludge distributors, and the general public about land application of sewage sludge and sewage sludge derivatives and the requirements of this section and sections 3131 and 3133. The director of the department of environmental quality may contract with a nonprofit educational

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organization to administer the educational components of this section. Ten percent of the fund shall be allocated to the department of agriculture to provide persons involved in or affected by land application of sewage sludge or sewage sludge derivatives with education and technical assistance relating to land application of sewage sludge or sewage sludge derivatives.

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

History: Add. 1997, Act 29, Imd. Eff. June 18, 1997.

Popular name: Act 451

Popular name: NREPA

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

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

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

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

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

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

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

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

History: Add. 1997, Act 29, Imd. Eff. June 18, 1997.

Popular name: Act 451

Popular name: NREPA

324.3134 Operator training and certification fund.

Sec. 3134. (1) The operator training and certification fund is created within the state treasury.

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

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

(4) The department shall be the administrator of the fund for auditing purposes.

(5) The department shall expend money from the fund, upon appropriation, only to administer this part, part 41, and the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, including all of the following:

(a) Licensing, examination, compliance assistance, education, training, and other certification activities directly related to this part, part 41, and the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(b) Maintenance of program data.

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

(d) Program administration activities.

(6) By January 1 of each year until January 1, 2017, the department shall prepare and submit to the governor, the chairs of the standing committees of the senate and house of representatives with primary responsibility for issues related to natural resources and the environment, and the chairs of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the department's administration of the operator training and certification program under section 3110, section 4104, and section 9 of the safe drinking water act, 1976 PA 399, MCL 325.1009, in the previous fiscal year. This report shall include, at a minimum, all of the following as itemized for each operator training and certification program:

(a) The type and number of training programs offered by the department, including the total number of participants in each type of training program.

(b) The type and number of certification exams given.

(c) The type and number of certifications awarded.

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

History: Add. 2011, Act 148, Imd. Eff. Sept. 21, 2011.

Popular name: Act 451

Popular name: NREPA

PART 33

AQUATIC NUISANCE CONTROL

324.3301 Definitions; A to D.

Sec. 3301. As used in this part:

(a) "Aquatic invasive species" means an aquatic species that is nonnative to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

(b) "Aquatic nuisance" means an organism that lives or propagates, or both, within the aquatic environment and that impairs the use or enjoyment of the waters of the state, including the intermediate aquatic hosts for schistosomes that cause swimmer's itch.

(c) "Certificate of coverage" means written authorization from the department to implement a project under a general permit.

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

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

History: Add. 2004, Act 246, Eff. Oct. 1, 2004;—Am. 2014, Act 253, Imd. Eff. June 30, 2014.

Compiler's note: Former PART 33 was entitled "CONTAMINATION OF WATERS." Former MCL 324.3301, which pertained to disposal of refuse from fish catch, was repealed by Act 27 of 1996, Imd. Eff. Feb. 26, 1996.

Popular name: Act 451

Popular name: NREPA

324.3302 Definitions; G to W.

Sec. 3302. As used in this part:

(a) “General permit” means a permit for a category of activities that the department determines will not negatively impact human health and will have no more than minimal short-term adverse impacts on the natural resources and environment.

(b) “Lake management plan” means a document that contains all of the following:

(*i*) A description of the physical, chemical, and biological attributes of a waterbody.

(*ii*) A description of the land uses surrounding a waterbody.

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(*iii*) A detailed description of the historical and planned future management of the waterbody.

(c) "Violation of this part" means a violation of a provision of this part or a permit, certificate of coverage, or order issued under or rule promulgated under this part.

(d) "Waters of the state" or "waterbody" means groundwaters, lakes, ponds, rivers, streams, and wetlands and all other watercourses and waters within the jurisdiction of this state including the Great Lakes bordering this state.

History: Add. 2004, Act 246, Eff. Oct. 1, 2004.

Compiler's note: Former MCL 333.3302, which pertained to nonresident license to use pound or trap net, fee, and violation, was repealed by Act 27 of 1996, Imd. Eff. Feb. 26, 1996.

Popular name: Act 451

Popular name: NREPA

324.3303 Chemical treatment of waters for aquatic nuisance control; permit or certificate of coverage required; exception; records; qualifications; authorization under part 31.

Sec. 3303. (1) Subject to subsections (2), (4), and (5), a person shall not chemically treat either of the following for purposes of aquatic nuisance control unless the person has obtained from the department an individual permit or a certificate of coverage under this part:

(a) Any waters of the state, if water is visibly present or contained in the area of impact at the time of chemical treatment.

(b) The Great Lakes or Lake St. Clair if the area of impact is exposed bottomland located below the ordinary high-water mark.

(2) Subject to subsections (3), (4), and (5), a person may chemically treat waters of the state for purposes of aquatic nuisance control without obtaining from the department an individual permit or a certificate of coverage if all of the following criteria are met:

(a) The waterbody does not have an outlet.

(b) There is no record of species on a list of endangered or threatened species referred to in part 365.

(c) The waterbody has a surface area of less than 10 acres.

(d) If the bottomlands of the waterbody are owned by more than 1 person, written permission for the proposed chemical treatment is obtained from each owner.

(e) The person posts the area of impact in the manner provided in section 3310(d).

(3) A person conducting a chemical treatment authorized under subsection (2) shall maintain any written permissions required under subsection (2) and records of treatment, including treatment date, chemicals applied, amounts applied, and a map indicating the area of impact, for 1 year from the date of each chemical treatment. The records shall be made available to the department upon request.

(4) A person shall not apply for a permit or certificate of coverage under subsection (1) or conduct a chemical treatment described in this section unless the person is 1 or more of the following:

(a) An owner of bottomland within the proposed area of impact.

(b) A lake board established under part 309 for the affected waterbody.

(c) A state or local governmental entity.

(d) A person who has written authorization to act on behalf of a person described in subdivision (a), (b), or (c).

(5) The chemical treatment of waters authorized pursuant to part 31 is not subject to this part.

History: Add. 2004, Act 246, Eff. Oct. 1, 2004.

Compiler's note: Former MCL 324.3303, which pertained to unlawful dumping into waters and molesting of nets, was repealed by Act 27 of 1996, Imd. Eff. Feb. 26, 1996.

Popular name: Act 451

Popular name: NREPA

324.3304 Lake management plan as part of permit application; proposal for whole lake evaluation treatment; placement of specific conditions in permit; scientific rationale for permit denial.

Sec. 3304. (1) An applicant shall provide a lake management plan as part of an application for permit, if a whole lake treatment is proposed.

(2) An applicant for a permit for a whole lake evaluation treatment may provide scientific evidence and documentation that the use of a specific pesticide, application rate, or means of application will selectively control an aquatic nuisance but not cause unacceptable impacts on native aquatic vegetation, other aquatic or terrestrial life, or human health. Such evaluation treatments include the use of fluridone at rates in excess of 6 parts per billion. The department may place special conditions in a permit issued under this subsection to

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require additional ambient monitoring to document possible adverse impacts on native aquatic vegetation or other aquatic life. If the department denies the application, the department shall provide to the applicant the scientific rationale for the denial, in writing.

History: Add. 2004, Act 246, Eff. Oct. 1, 2004.

Compiler's note: Former MCL 324.3304, which pertained to violation of part as misdemeanor and penalty, was repealed by Act 27 of 1996, Imd. Eff. Feb. 26, 1996.

Popular name: Act 451

Popular name: NREPA

324.3305 Registration of chemical used for aquatic nuisance control; evaluations; order to prohibit or suspend chemical use.

Sec. 3305. (1) A chemical shall not be used in waters of the state for aquatic nuisance control unless it is registered with the EPA, pursuant to section 3 of the federal insecticide, fungicide, and rodenticide act, 7 USC 136a, and the department of agriculture and rural development, pursuant to part 83, for the aquatic nuisance control activity for which it is used. The department shall not deny a permit or certificate of coverage because of the specific chemical proposed to be used, if the chemical is so registered, unless the department has worked with the applicant to identify an appropriate alternative chemical that satisfies the department's concern and no such chemical is available.

(2) The department may conduct evaluations of the impacts and effectiveness of any chemicals that are proposed for use for aquatic nuisance control in waters of the state. This may include the issuance of permits for field assessments of the chemicals.

(3) The director, in consultation with the director of the department of agriculture and rural development, may issue an order to prohibit or suspend the use of a chemical for aquatic nuisance control if, based on substantial scientific evidence, use of the chemical causes unacceptable negative impacts to human health or the environment. The department shall not issue permits authorizing the use of such chemicals. In addition, a person shall cease the use of such chemicals upon notification by the department.

History: Add. 2004, Act 246, Eff. Oct. 1, 2004;—Am. 2014, Act 253, Imd. Eff. June 30, 2014.

Compiler's note: Former MCL 324.3305, which pertained to civil liability for unlawful acts against property lawfully set and used to take fish, was repealed by Act 27 of 1996, Imd. Eff. Feb. 26, 1996.

Popular name: Act 451

Popular name: NREPA

324.3306 Certificate of coverage; application fee; adjustment; target; "consumer price index" defined; aquatic nuisance control fund; payment of fee.

Sec. 3306. (1) Until October 1, 2014, an application for a certificate of coverage under this part shall be accompanied by a fee of $75.00. Subject to subsection (2), an application for an individual permit under this part shall be accompanied by the following fee, based on the size of the area of impact:

(a) Less than 1/2 acre, $75.00.

(b) 1/2 acre or more but less than 5 acres, $200.00.

(c) 5 acres or more but less than 20 acres, $400.00.

(d) 20 acres or more but less than 100 acres, $800.00.

(e) 100 acres or more, $1,500.00.

(2) For the 2014-2015 state fiscal year and each subsequent fiscal year, the department shall proportionately adjust the certificate of coverage and permit application fees under subsection (1) by category to achieve a target in fee revenue under subsection (1) and shall post the adjusted fees on its website by November 1. The department shall set the target so that the annual cumulative total of the target amount plus all of the following equals, as nearly as possible, $900,000.00:

(a) The total amount of annual fees to be collected under section 3309 in the state fiscal year.

(b) The amount of general funds appropriated to the program under this part.

(c) The amount in the aquatic nuisance control fund created under subsection (4) in excess of $100,000.00 carried forward from the prior state fiscal year.

(3) Notwithstanding any other provision of this section, fees as adjusted under subsection (2) shall be proportional to and shall not exceed the amounts set forth in subsection (1). For each state fiscal year beginning with the 2015-2016 state fiscal year, the state treasurer shall adjust the $900,000.00 figure in subsection (2) by an amount determined by the state treasurer at the end of the preceding fiscal year to reflect the cumulative annual percentage change in the consumer price index. As used in this subsection, "consumer price index" means the most comprehensive index of consumer prices available for this state from the bureau of labor statistics of the United States department of labor.

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(4) The aquatic nuisance control fund is created in the state treasury. The department shall forward all fees collected under this section, section 3309, and section 3311 to the state treasurer for deposit into the fund. The state treasurer may receive money or other assets from any other source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund. The department shall be the administrator of the fund for auditing purposes. The department shall expend money from the fund, upon appropriation, only for the administration of this part, including, but not limited to, the following:

(a) Issuance of certificates of coverage and permits.

(b) Technology and reasonable laboratory costs to operate the program under this part.

(c) Compliance and enforcement activities related to aquatic nuisance control.

(d) Education of aquatic herbicide applicators, local and state government agencies, lake boards, lakefront property owners, and the general public about aquatic nuisance control and the requirements of this part. The director may contract with a nonprofit educational organization to administer an educational program as described in this subdivision.

(5) A fee under this section, section 3309, or section 3311 may be paid by credit or debit card or electronic fund transfer. The department shall determine which major credit and debit cards may be used to pay a fee. If a fee is paid by credit or debit card, the department may collect a service assessment from the user of the credit or debit card. The service assessment shall not exceed the actual cost to the department of the credit or debit card transaction.

(6) The department shall not charge a fee for an amendment to an application for a certificate of coverage or permit, including an amendment to an application after that application has been resubmitted under section 3307(7).

History: Add. 2004, Act 246, Eff. Oct. 1, 2004;—Am. 2008, Act 276, Imd. Eff. Sept. 29, 2008;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2014, Act 253, Imd. Eff. June 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.3307 Application; electronic submission; approval or denial within certain time period; requirements; failure to satisfy requirements.

Sec. 3307. (1) An application for a certificate of coverage or permit may be submitted electronically.

(2) The department shall either approve or deny an application for a certificate of coverage by the latest of the following dates:

(a) April 15.

(b) 15 working days after receipt of a complete application.

(c) Any date requested by the applicant for the certificate of coverage and agreed to by the department.

(3) If the department denies an application for a certificate of coverage, the department shall notify the applicant, in writing, of the reasons for the denial.

(4) The department shall approve an application for a permit in whole or part and issue the permit, or shall deny the application, by the latest of the following dates:

(a) April 15.

(b) 30 working days after receipt of a complete application except that this approval time is reduced to 15 working days after receipt of a complete application if the waterbody is listed on the registry under section 3315 as being infested with the particular aquatic invasive species that the applicant proposes to control under the permit.

(c) Any date requested by the permit applicant and agreed to by the department.

(5) The department shall not delay processing an application for a permit or certificate of coverage because the department has not completed processing of the fee payment accompanying the application. This subsection does not apply to an applicant if a previous fee payment offered by the applicant under section 3306 or section 3309 failed because of nonsufficient funds.

(6) If the department approves the application for a permit in part or denies the application, the department shall, by the deadline for approval or denial of the application, notify the applicant, in writing, of the reasons for the partial approval or denial.

(7) The department shall not deny an application for a certificate of coverage or a permit because it was submitted after a certain date in the year in which treatment is proposed. If the department approves an application in part or denies an application, the applicant may resubmit the application with changes to address the reasons for partial approval or denial. The resubmitted application is not subject to an additional

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fee.

(8) If the department fails to satisfy the requirements of subsections (2) to (7) with respect to an application for a certificate of coverage or a permit, all of the following apply:

(a) The department shall pay the applicant an amount equal to 15% of the application fee specified under section 3306 for that certificate of coverage or permit.

(b) The application shall be considered to be approved and the department shall be considered to have made any determination required for approval if all of the following apply:

(*i*) The proposed area of impact is the same as or entirely contained within the area of impact approved in a previous permit.

(*ii*) The active ingredient or trade name of each chemical proposed to be applied is the same as approved in a previous permit and each chemical is currently approved for use by the department.

(*iii*) The application rate and number of treatments do not exceed those approved in the previous permit.

(*iv*) The minimum length of time between treatments is not less than that approved in the previous permit.

History: Add. 2004, Act 246, Eff. Oct. 1, 2004;—Am. 2014, Act 253, Imd. Eff. June 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.3308 Written permission from bottomland owner.

Sec. 3308. An applicant shall obtain authorization to chemically treat the proposed area of impact by obtaining written permission from each person who owns bottomlands in the area of impact. The applicant shall maintain the written permission for 1 year from the expiration date of the permit and shall make the records available to the department upon request. Written permission from each bottomland owner is not required if the applicant is providing, or has contracted to provide, chemical treatment for either of the following:

(a) A lake board established under part 309 for the waterbody for which chemical treatment is proposed.

(b) This state or a local unit of government acting under authority of state law to conduct lake improvement projects or to control aquatic vegetation.

History: Add. 2004, Act 246, Eff. Oct. 1, 2004.

Popular name: Act 451

Popular name: NREPA

324.3309 Permit; term; information to be included; authorization of chemical treatment; annual fees; additional conditions.

Sec. 3309. (1) The term of a certificate of coverage shall not be less than 3 years unless the applicant requests a shorter term.

(2) A permit under this part shall, at a minimum, include all of the following information:

(a) The active ingredient or the trade name of each chemical to be applied.

(b) The application rate of each chemical.

(c) The maximum amount of each chemical to be applied per treatment.

(d) Minimum length of time between treatments for each chemical.

(e) A map or maps that clearly delineate the approved area of impact.

(f) The term of the permit. The term shall not be less than 3 years unless the applicant requests a shorter term.

(3) A permit under this part shall authorize chemical treatment in each year covered by the permit. This subsection does not apply to a chemical if the chemical's annual use is restricted in rules that were in effect on the effective date of the amendatory act that added this subsection.

(4) By April 1 of the second and each subsequent year of a permit, the permittee shall pay the department an annual fee. The annual fee shall equal the permit application fee paid for that specific permit under section 3306 including, for annual fees due after the initial treatment of an expanded area of impact under section 3311(3), the additional fee under section 3311(3)(e). If an annual fee is not received by the department by April 1, the permit is suspended until the annual fee is paid. When the application fee for a permit is paid, an applicant may choose to also pay in advance all the annual fees that will become due under this subsection if the permit is granted for the term requested by the applicant. If the application is denied or is granted for a shorter period than the applicant requested, the department shall refund the overpayment of annual fees.

(5) The department may impose additional conditions on a permit under this part to protect the natural resources or the public health, to prevent economic loss or impairment of recreational uses, to protect nontarget organisms, or to help ensure control of the aquatic nuisance.

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History: Add. 2004, Act 246, Eff. Oct. 1, 2004;—Am. 2014, Act 253, Imd. Eff. June 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.3310 Permit conditions.

Sec. 3310. As a condition of a permit under this part, the department may require the permittee to do any of the following:

(a) Notify the department not less than 2 working days in advance of chemical treatment.

(b) Proceed with chemical treatment only if a department representative is present.

(c) Allow the department or its representative to collect a sample of the chemical or chemicals used before or during any chemical treatment.

(d) Post the area of impact before chemical treatment with signs, as follows:

(*i*) Each sign shall be of a brilliant color and made of sturdy, weather-resistant material. Each sign shall be at least 8-1/2 by 11 inches and shall be attached to a supporting device with the bottom of the sign at least 12 inches above the ground surface.

(*ii*) Signs shall be posted in the following locations:

(A) Subject to sub-subparagraph (C), along the shoreline of the area of impact not more than 100 feet apart. Signs shall also be posted in riparian lands adjacent to that portion of the shoreline.

(B) Subject to sub-subparagraph (C), for an area of impact of 2 or more acres, at all access sites, boat launching areas, and private and public parks located on the waterbody in conspicuous locations, such as at the entrances, boat ramps, and bulletin boards, if permitted by managers or owners. If the access sites, launching areas, and parks are not to be treated or are not adjacent to the area of impact, then the signs shall clearly indicate the location of the area of impact.

(C) At alternative posting locations approved by the department upon a determination that the locations where signs are otherwise required to be posted are impractical or unfeasible. The department's determination shall be based on a written request from the applicant that includes an explanation of the need for alternative posting locations and a description of the proposed alternative posting locations.

(*iii*) The department shall specify by rule the information required to be on the signs.

(e) Publish a notice in a local newspaper or make an announcement on a local radio station regarding the chemical treatment. The notice or announcement shall include all of the following information:

(*i*) The permit number.

(*ii*) The name of the waterbody.

(*iii*) A list of the chemicals to be used with corresponding water use restrictions.

(*iv*) A description of the area of impact.

(*v*) The proposed treatment dates.

(f) Apply chemicals so that swimming restrictions and fish consumption restrictions are not imposed on any Saturday, Sunday, or state-declared holiday.

(g) Take special precautions to avoid or minimize potential impacts to human health, the environment, and nontarget organisms.

(h) Notify, in writing, an owner of any waterfront property within 100 feet of the area of impact, not less than 7 days and not more than 45 days before the initial chemical treatment. However, if the owner is not the occupant of the waterfront property or the dwelling located on the property, then the owner is responsible for notifying the occupant. Written notification shall include all of the following information:

(*i*) Name, address, and telephone number of the permittee.

(*ii*) A list of chemicals proposed for use with corresponding water use restrictions.

(*iii*) Approximate treatment dates for each chemical to be used.

(i) Complete and return the treatment report form provided by the department for each treatment season.

(j) Perform lake water residue analysis to verify the chemical concentrations in the waterbody according to a frequency, timing, and methodology approved by the department.

(k) Before submitting a permit application, perform aquatic vegetation surveys according to a frequency, timing, and methodology approved by the department.

(*l*) Use chemical control methods for nuisance aquatic vegetation that are consistent with the approved vegetation management plan submitted separately or as part of a lake management plan. The department may approve modifications to the vegetation management plan upon receipt of a written request from the permittee that includes supporting documentation.

(m) Perform pretreatment monitoring of the target aquatic nuisance population according to a frequency, timing, and methodology that has been approved by the department before submittal of a permit application.

History: Add. 2004, Act 246, Eff. Oct. 1, 2004.

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Popular name: Act 451

Popular name: NREPA

324.3311 Permit; revisions; transfer; expansion of area of impact.

Sec. 3311. (1) The department may make revisions to a permit under this part, to minimize the impacts to the natural resources, public health, and safety or to improve aquatic nuisance control, if the proposed revisions do not change the scope of the project and the permittee requests the revisions in writing. The department shall not charge a fee for a request for revisions to a permit. The department shall approve a request for revisions to a permit in whole or in part or deny the request within 3 business days after the request is received. The request shall include all of the following information:

(a) The proposed changes to the permit.

(b) An explanation of the necessity for the proposed changes.

(c) Maps that clearly delineate any proposed changes to the area of impact.

(d) Additional information that would help the department reach a decision on a permit amendment.

(2) If the permittee has written authorization to act on behalf of a person described in section 3303(4)(a), (b), or (c), upon written request of that person, the department shall transfer the permit to a new permittee with written authorization to act on behalf of that person. The department shall notify the original permittee of the transfer of the permit.

(3) Subject to subsection (4), a permittee may, without a revision to the permit or certificate of coverage, expand the area of impact beyond that authorized in the permit or certificate of coverage to include adjacent areas of the same waterbody that become infested after the application for the permit or certificate of coverage was submitted to the department. The permittee may increase the amount of chemicals used, as authorized in the permit or certificate of coverage, by an amount proportionate to the expansion in the area of impact. Before the initial treatment of the expanded area, the permittee shall notify the department. The permittee shall, within 15 business days after the initial treatment of the expanded area of impact, provide the department with all of the following:

(a) A written explanation of the necessity for the expansion of the area of impact.

(b) A map that clearly delineates the changes to the area of impact.

(c) A written statement specifying the increase in the amount of chemicals used or to be used as a result of the expansion of the area of impact.

(d) The treatment dates for the expanded area of impact.

(e) If the permit application fee under section 3306 would have been higher if the expanded area of impact had been included in the permit application, a fee equal to the difference between the application fee paid and the application fee that would have been due.

(4) If the area of impact authorized in a permit or certificate of coverage is greater than 100 acres, a permittee shall not expand the area of impact under subsection (3) by more than 50% unless both of the following apply:

(a) The permittee has notified the department in advance of the proposal to expand the area of impact. The notification shall include the information described in subsection (3)(a) and (b).

(b) The department has not, within 2 business days after receiving notification under subdivision (a), notified the permittee of specific concerns about the proposal and that the proposal requires a revision of the permit or certificate of coverage.

History: Add. 2004, Act 246, Eff. Oct. 1, 2004;—Am. 2014, Act 253, Imd. Eff. June 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.3312 Rules.

Sec. 3312. The department may promulgate rules to implement this part.

History: Add. 2004, Act 246, Eff. Oct. 1, 2004.

Popular name: Act 451

Popular name: NREPA

324.3313 Violations as misdemeanors; penalty; commencement of civil action by attorney general; revocation of permit or certificate of coverage.

Sec. 3313. (1) A person who commits a violation of this part that does not result in harm to or pose a substantial threat to natural resources, the environment, or human health is guilty of a misdemeanor punishable by a fine of not more than $500.00 for each violation. A law enforcement officer may issue and serve an appearance ticket upon a person for that violation pursuant to sections 9a to 9g of chapter IV of the

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code of criminal procedure, 1927 PA 175, MCL 764.9a to 764.9g.

(2) A person who commits a violation of this part that results in harm to or poses a substantial threat to natural resources, the environment, or human health, or a corporate officer who had advance knowledge of such a violation of this part but failed to prevent the violation, is guilty of a misdemeanor and may be imprisoned for not more than 6 months and shall be fined not less than $1,000.00 or more than $2,500.00.

(3) A person who commits a violation described in subsection (2) after a first conviction for such a violation is guilty of a misdemeanor and may be imprisoned for not more than 1 year and shall be fined not less than $2,500.00 or more than $5,000.00.

(4) A person who commits a violation of this part that results in serious harm to or poses an imminent and substantial threat to natural resources, the environment, or human health and who knew or should have known that the violation could have such a result is guilty of a misdemeanor and may be imprisoned for not more than 1 year and shall be fined not less than $5,000.00 or more than $10,000.00.

(5) A person who commits a violation described in subsection (4) after a first conviction for such a violation is guilty of a misdemeanor and may be imprisoned for not more than 2 years and shall be fined not less than $7,500.00 or more than $15,000.00.

(6) A person who knowingly makes a false statement, representation, or certification in an application for a permit or a certificate of coverage or in a report required by a permit or certificate of coverage issued under or rule promulgated under this part is guilty of a misdemeanor and shall be fined not less than $1,000.00 or more than $2,500.00.

(7) A person who commits a violation described in subsection (6) after a first conviction for such a violation is guilty of a misdemeanor and may be imprisoned for not more than 1 year and shall be fined not less than $2,000.00 or more than $5,000.00.

(8) The attorney general may commence a civil action for appropriate relief for a violation of this part, including a permanent or temporary injunction restraining a violation or ordering restoration of natural resources affected by a violation and a civil fine of not more than $25,000.00. The action may be commenced in the circuit court for the county of Ingham or the county in which the violation occurred.

(9) If a person knowingly commits a violation of this part, the department may revoke a permit or certificate of coverage issued to the person under this part.

History: Add. 2004, Act 247, Eff. Oct. 1, 2004.

Popular name: NREPA

324.3315 Registry of waterbodies infested by aquatic invasive species; maintenance of website.

Sec. 3315. The department shall post, by January 1, 2016, and maintain on its website a registry of waterbodies infested by aquatic invasive species and the particular aquatic invasive species infesting each waterbody. The registry shall be based on information from all of the following:

(a) Permits and certificates of coverage issued under this part.

(b) Reports received by the department from any of the following:

(*i*) Certified applicators or registered applicators under part 83.

(*ii*) Representatives of public or private institutions of higher education.

(*iii*) Representatives of any other state, local, or federal agency with responsibility for the environment or natural resources.

History: Add. 2014, Act 253, Imd. Eff. June 30, 2014.

Popular name: Act 451

Popular name: NREPA

PART 35
USE OF WATER IN MINING LOW-GRADE IRON ORE

324.3501 Definitions.

Sec. 3501. As used in this part:

(a) “Low-grade iron ore” means iron-bearing rock in the Upper Peninsula of this state that is not merchantable as ore in its natural state and from which merchantable ore can be produced only by beneficiation or treatment.

(b) “Low-grade iron ore mining property” includes the ore beneficiation or treatment plant and other necessary buildings, facilities, and lands located in the Upper Peninsula of this state.

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

Popular name: Act 451

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Popular name: NREPA

324.3502 Iron ore mining in Upper Peninsula; issuance of water permits.

Sec. 3502. Substantial deposits of low-grade iron ore are located in the Upper Peninsula of this state. The development and continuation of the industry of mining and beneficiating low-grade ores will provide employment and generally improve economic conditions in that area and will be in the public interest and for the public welfare of this state. As the mining and beneficiating of the low-grade iron ore requires considerable quantities of water, it is necessary that persons engaged in or about to engage in the mining and beneficiation of low-grade iron ores be assured of an adequate and continuing supply of water for the operations to protect the large capital expenditures required for mills, plants, and other improvements. Therefore, the use of water in connection with the mining and beneficiation of low-grade iron ores is in the public interest, for the public welfare, and for a public purpose, and permits for the use of water or waters may be issued by the department in connection with the mining and beneficiation of low-grade iron ores as provided in this part.

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

Popular name: Act 451

Popular name: NREPA

324.3503 Operation of low-grade iron ore mining property; draining, diverting, controlling, or using water; permit required; application; contents; hearing; notice; publication; findings.

Sec. 3503. A person shall not drain, divert, control, or use water for the operation of a low-grade iron ore mining property except as authorized by a permit issued by the department pursuant to part 13. An application for a permit shall include information and data as may be prescribed by the department in its rules and regulations. Not later than 60 days following receipt of an application, the department shall fix the time and place for a public hearing on the application and shall publish notice of the hearing. The notice shall be published twice in each county involved in at least 1 newspaper of general circulation in the county. At the hearing, the applicant and any other interested party may appear, present witnesses, and submit evidence. Following the hearing, the department may grant the permit and publish notice of the granting of the permit, in the manner provided for publication of notice of hearing, upon finding the following conditions:

(a) That the proposed drainage, diversion, control, or use of waters is necessary for the mining of substantial deposits of low-grade iron ore, and that other feasible and economical methods of obtaining a continuing supply of water for that purpose are not available to the applicant.

(b) That the proposed drainage, diversion, control, or use of waters will not unreasonably impair the interests of the public or of riparians in lands or waters or the beneficial public use of lands, and will not endanger the public health or safety.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.3504 Water permits; liability of state.

Sec. 3504. Neither the state nor any of its officers, agents, or employees shall incur any liability because of the issuance of a permit under this part or of any act or omission of the permittee or his or her agents or servants under or in connection with a permit issued under this part.

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

Popular name: Act 451

Popular name: NREPA

324.3505 Water permits; term.

Sec. 3505. Every permit granted under this part shall be for a term as is necessary to permit the mining to exhaustion and beneficiation of all low-grade iron ore referred to in the permit application, but not to exceed 50 years. The department may prescribe in the permit such time as it considers reasonable for the commencement or completion of any operations or construction under the permit or the exercise of the rights granted in the permit. The original term of the permit or the time allowed for the performance of any condition in the permit may be extended by the department upon application of the permittee.

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

Popular name: Act 451

Popular name: NREPA

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324.3506 Water permits; rights; violation; revocation; emergency order for abatement.

Sec. 3506. Every permit issued by the department under this part shall give to the permittee the right to use the water specified in the permit at the times, in the manner, in the quantity, and under the circumstances as specified in the permit, subject to the conditions contained in the permit, and shall be irrevocable except for a breach or violation of the terms and conditions of the permit. If the department finds, upon consideration of the needs of the applicant, the public interest to be served by the use of the water by the applicant, and all other facts relating to the use of the water, that the public interest requires the inclusion in the permit of a provision that will authorize modification or revocation of the permit, then the department may provide for modification or revocation of the permit by including in the permit the specific grounds upon which the permit may be modified or revoked by the department in the public interest. A permit issued pursuant to this part shall not be revoked for breach or violation of the terms and conditions of the permit or be revoked or modified upon other grounds specified in the permit unless the permittee has been given an opportunity to be heard on the grounds for the proposed revocation or modification after 30 days' written notice to the permittee. A permit shall not be revoked for breach or violation of the terms and conditions of the permit unless the permittee has been given an opportunity to correct or remedy the alleged breach or violation within a reasonable time and has failed to do so. Every notice shall specify the grounds for the proposed revocation or modification and, in the event of a proposed modification, the extent of the modification. If a violation of the conditions of a permit exists that in the judgment of the department threatens the public interest in the waters involved as to require abatement without first giving 30 days' written notice to the permittee, the department may issue an emergency order for abatement, which order shall have the same validity as if a 30 days' written notice had been given and the permittee had been granted a hearing. The emergency order shall remain in force no longer than 21 days from its effective date. Failure to comply with an emergency order constitutes grounds for revocation of the permit.

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

Popular name: Act 451

Popular name: NREPA

324.3507 Enforcement; administration.

Sec. 3507. (1) The department is responsible for enforcing this part.

(2) At any hearing, the department, or its duly authorized agents, has the power to administer oaths, to take testimony and compel the introduction of written evidence, to issue subpoenas, and to compel the attendance of witnesses.

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

Popular name: Act 451

Popular name: NREPA

324.3508 Rules; judicial review.

Sec. 3508. The department shall promulgate rules to implement this part. Any interested person has the right of judicial review from any decision, order, or permit made or granted by the department under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

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

Popular name: Act 451

Popular name: NREPA

PART 37
WATER POLLUTION CONTROL FACILITIES; TAX EXEMPTION

324.3701 Definitions.

Sec. 3701. As used in this part:

(a) “Facility” means any disposal system, including disposal wells, or any treatment works, appliance, equipment, machinery, or installation constructed, used, or placed in operation primarily for the purpose of reducing, controlling, or eliminating water pollution caused by industrial waste.

(b) “Industrial waste” means any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacture, trade, or business, or from the development, processing, or recovery of any paper or wood, which is capable of polluting the waters of the state.

(c) “Treatment works” means any plant, pumping station, incinerator, or other works or reservoir used

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primarily for the purpose of treating, stabilizing, isolating, or holding industrial waste.

(d) “Disposal system” means a system used primarily for disposing of or isolating industrial waste and includes pipelines or conduits, pumping stations and force mains, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting water-borne industrial waste to a point of disposal, treatment, or isolation, except that which is necessary to the manufacture of products.

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

Popular name: Act 451

Popular name: NREPA

324.3702 Tax exemption certificate; application; filing; manner; form; notice; hearing.

Sec. 3702. (1) An application for a water pollution control tax exemption certificate shall be filed with the state tax commission in a manner and in a form as prescribed by the state tax commission. The application shall contain plans and specifications of the facility, including all materials incorporated or to be incorporated in the facility and a descriptive list of all equipment acquired or to be acquired by the applicant for the purpose of industrial waste pollution control, together with the proposed operating procedure for the control facility.

(2) Before issuing a certificate, the state tax commission shall seek approval of the department and give notice in writing by certified mail to the department of treasury and to the assessor of the taxing unit in which the facility is located or to be located, and shall afford to the applicant and the assessor an opportunity for a hearing. Tax exemption granted under this part shall be reduced to the extent of any commercial or productive value derived from any materials captured or recovered by any facility.

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

Popular name: Act 451

Popular name: NREPA

324.3703 Issuance of certificate; grounds; effective date.

Sec. 3703. If the department finds that the facility is designed and operated primarily for the control, capture, and removal of industrial waste from the water, and is suitable, reasonably adequate, and meets the intent and purposes of part 31, the department shall notify the state tax commission, which shall issue a certificate. The effective date of the certificate is the date on which the certificate is issued.

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

Popular name: Act 451

Popular name: NREPA

324.3704 Exemption of facility from real and personal property taxes; exemption of certain tangible personal property from sales and use taxes; statement in certificate.

Sec. 3704. (1) For the period subsequent to the effective date of the certificate and continuing as long as the certificate is in force, a facility covered by the certificate is exempt from real and personal property taxes imposed under the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws.

(2) Tangible personal property purchased and installed as a component part of the facility shall be exempt from both of the following:

(a) Sales taxes imposed under the general sales tax act, Act No. 167 of the Public Acts of 1933, being sections 205.51 to 205.78 of the Michigan Compiled Laws.

(b) Use taxes imposed under the use tax act, Act No. 94 of the Public Acts of 1937, being sections 205.91 to 205.111 of the Michigan Compiled Laws.

(3) The certificate shall state the total acquisition cost of the facility entitled to exemption.

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

Popular name: Act 451

Popular name: NREPA

324.3705 Tax exemption certificate; issuance; mailing to applicant, local tax assessors, and department of treasury; filing; notice of refusal of certificate.

Sec. 3705. The state tax commission shall send a water pollution control tax exemption certificate, when issued, by certified mail to the applicant, and certified copies by certified mail to the assessor of the taxing unit in which any property to which the certificate relates is located or to be located and to the department of treasury, which copies shall be filed of record in their offices. Notice of the state tax commission's refusal to issue a certificate shall be sent by certified mail to the applicant, to the department of treasury, and to the

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assessor.

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

Popular name: Act 451

Popular name: NREPA

324.3706 Tax exemption certificate; modification or revocation; grounds; notice and hearing; statute of limitations.

Sec. 3706. (1) The state tax commission, on notice by certified mail to the applicant and opportunity for a hearing, on its own initiative or on complaint of the department, the department of treasury, or the assessor of the taxing unit in which any property to which the certificate relates is located, shall modify or revoke the certificate if any of the following appear:

(a) The certificate was obtained by fraud or misrepresentation.

(b) The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of a facility or to operate the facility for the purpose and degree of control specified in the certification or an amended certificate.

(c) The facility covered by the certificate is no longer used for the primary purpose of pollution control and is being used for a different purpose.

(2) On the mailing by certified mail to the certificate holder, the department of treasury, and the local assessor of notice of the action of the state tax commission modifying or revoking a certificate, the certificates shall cease to be in force or shall remain in force only as modified. If a certificate is revoked because it was obtained by fraud or misrepresentation, all taxes that would have been payable if a certificate had not been issued are immediately due and payable with the maximum interest and penalties prescribed by applicable law. A statute of limitations shall not operate in the event of fraud or misrepresentation.

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

Popular name: Act 451

Popular name: NREPA

324.3707 Tax exemption certificate; appeal.

Sec. 3707. A party aggrieved by the issuance, refusal to issue, revocation, or modification of a pollution control tax exemption certificate may appeal from the finding and order of the state tax commission in the manner and form and within the time provided by the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

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

Popular name: Act 451

Popular name: NREPA

324.3708 State tax commission; rules.

Sec. 3708. The state tax commission may promulgate rules as it considers necessary for the administration of this part. These rules shall not abridge the authority of the department to determine whether or not industrial waste pollution control exists within the meaning of this part.

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

Popular name: Act 451

Popular name: NREPA

PART 39
CLEANING AGENTS

324.3901 Definitions; selling or distributing cleaner, rinsing aid, or sanitizing agent containing more than 14% phosphorus prohibited; selling or distributing products containing more than 28% phosphorus prohibited.

Sec. 3901. (1) As used in this part:

(a) "Cleaning agent" means a laundry detergent, dishwashing compound, household cleaner, metal cleaner, degreasing compound, commercial cleaner, industrial cleaner, phosphate compound, or other substance intended to be used for cleaning purposes. Cleaning agent does not include any of the following:

(*i*) A cleaner, rinsing aid, or sanitizing agent intended primarily for use in commercial machine dishwashers with not more than 14% phosphorus.

(*ii*) A cleaner for food processing with not more than 14% phosphorus.

(*iii*) A cleaner for industrial uses with not more than 28% phosphorus.

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(b) “Nutrient” means a substance or combination of substances that, when added to the waters of this state in a sufficient quantity, provide nourishment that promotes the growth of aquatic vegetation in the waters to such a density as to interfere with or be detrimental to use of the waters by human beings or by an animal, fish, or plant useful to human beings.

(c) “Water conditioner” means a water softening chemical, antiscale chemical, corrosion inhibitor, or other substance intended to be used to treat water.

(2) Notwithstanding any other provision of this part:

(a) A person shall not sell or distribute for use in this state a cleaner, rinsing aid, or sanitizing agent intended primarily for use in commercial automatic or commercial machine dishwashers that contains phosphorus in excess of 14% by weight expressed as elemental phosphorus.

(b) A person shall not sell or distribute for use in this state a cleaner, rinsing aid, or sanitizing agent intended primarily for use in dairy agricultural and farm operations and in the manufacture, preparation, and processing of foods and food products including those used in dairy, beverage, egg, fish, brewery, poultry, meat, fruit, and vegetable processing that contains phosphorus in excess of 14% by weight expressed as elemental phosphorus.

(c) A person shall not sell or distribute for use in this state a metal cleaner, metal brightener, metal treatment compound, conversion coating agent, corrosion remover, paint remover, rust inhibitor, etchant, phosphatizer, degreasing compound, industrial cleaner, or commercial cleaner intended primarily for use in industrial and manufacturing processes that contains phosphorus in excess of 28% by weight expressed as elemental phosphorus.

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

Popular name: Act 451

Popular name: NREPA

324.3902 Phosphorus content; cleaning agent intended for use beginning July 1, 2010.

Sec. 3902. A person shall not sell, offer for sale, or distribute for sale or use in this state any of the following:

(a) Subject to subdivision (b), a cleaning agent that contains phosphorus in any form in excess of 8.7% by weight expressed as elemental phosphorus.

(b) A cleaning agent that is intended for use in household clothes washing machines or, beginning July 1, 2010, in household dishwashers and that contains phosphorus in any form in excess of 0.5% by weight expressed as elemental phosphorus.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2008, Act 426, Imd. Eff. Jan. 6, 2009;—Am. 2008, Act 427, Imd. Eff. Jan. 6, 2009.

Popular name: Act 451

Popular name: NREPA

324.3903 Rules; compliance.

Sec. 3903. The department shall promulgate rules to implement this part. The rules may further restrict the nutrient content and other contents of cleaning agents and water conditioners to prevent unlawful pollution and control nuisance growths of algae, weeds, and slimes that are or may become injurious to other lawful water uses; to prevent cleaning agents and water conditioners, separately or in combination with other substances, from rendering or tending to render any waters of this state harmful or inimical to public health, animal or aquatic life, or beneficial water uses; and to minimize any hazard to the health or safety of users of the cleaning agents or water conditioners. The burden of proof is on a manufacturer of a cleaning agent or water conditioner, before distribution for sale or use in this state, to establish that its contents comply with this part and rules promulgated under this part, and will not or is not likely to adversely affect human health or the environment. A person shall not sell or distribute for use in this state a cleaning agent or water conditioner in violation of a rule promulgated under this part.

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

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 323.1171 et seq. of the Michigan Administrative Code.

324.3904 Prohibited sales.

Sec. 3904. A person shall not sell detergents or cleaning compounds containing any substance other than phosphorus that may cause unlawful pollution of the waters of the state when discharged into the waters of the state, if the department determines that the other substance will cause unlawful pollution under the

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circumstances of its expected use and disposal or will pose a hazard to human health and safety. A determination by the department does not limit, restrain, or in any way affect an action as it finds appropriate under part 31. The department may establish by rule the criteria by which it will determine the possible pollutional effect of any substance. This part does not apply to a detergent or cleaning compound contained in fuel or lubricating oil.

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

Popular name: Act 451

Popular name: NREPA

324.3905 Local regulation prohibited.

Sec. 3905. A local unit of government shall not enact or enforce an existing or future ordinance or rule with respect to the sale of cleaning agents containing phosphorus or any other substance that is or may be regulated under this part.

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

Popular name: Act 451

Popular name: NREPA

324.3906 Enforcement of part.

Sec. 3906. The department shall enforce this part and seek court enforcement of its orders pursuant to part 31.

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

Popular name: Act 451

Popular name: NREPA

SEWAGE DISPOSAL AND WATERWORKS SYSTEMS

PART 41
SEWERAGE SYSTEMS

324.4101 Definitions.

Sec. 4101. As used in this part:

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

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

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

(d) "Governmental agencies" means local units of government, metropolitan districts, or other units of government or the officers of the units of government authorized to own, construct, or operate sewerage systems to serve the public.

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

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

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

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

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

(j) "Small diameter pressure sewer and grinder pumping station" means a single project that includes the installation of new pressure sewers totaling not more than 5,000 feet and not more than 25 grinder pumping

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stations with each grinder pumping station serving not more than 5 separate owners and that is to be connected to an existing gravity collection system to provide sewer service to new areas previously not served by the public sewer system.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2006, Act 602, Imd. Eff. Jan. 3, 2007.

Popular name: Act 451

Popular name: NREPA

324.4102 Department of natural resources; powers.

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

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

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the Michigan Compiled Laws.

For transfer of authority, powers, duties, functions, and responsibilities of the Surface Water Quality Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 342.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.4103 Sewerage systems; inspection by department.

Sec. 4103. The department may enter at reasonable times the sewerage systems and other property of a person for the purpose of inspecting a sewerage system and carrying out the authority vested in the department by this part.

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

Popular name: Act 451

Popular name: NREPA

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

Sec. 4104. (1) The department may promulgate and enforce rules as the department considers necessary governing and providing a method of conducting and operating all or a part of sewerage systems including sewage treatment works. The department shall classify sewage treatment works with regard to size, type, location, and other physical conditions affecting those works and according to the skill, knowledge, experience, and character that the person who is in charge of the active operation of the sewage treatment works has to possess in order to successfully operate the works, to prevent the discharge of deleterious matter capable of being injurious to the health of the people, or to other public interests. The department shall examine or provide for the examination of persons as to their qualifications to operate sewage treatment works. The department shall promulgate rules regarding the classification of sewage treatment works, the examinations for certification of operators for those works, and the issuance and revocation of certificates, and shall issue and revoke certificates in accordance with those rules. Every sewage treatment works subject to this part shall be under the supervision of a properly certified operator, except that this section does not require the employment of a certified operator in a waste treatment works that receives only wastes that are not potentially prejudicial to the public health.

(2) In accordance with section 3110, the department may conduct a program for training persons seeking to be certified as operators under subsection (1) and shall administer operator certification programs for persons seeking to be certified as operators under subsection (1). Until October 1, 2017, the department may charge fees for these programs in accordance with section 3110. The department shall transmit fees collected under this section to the state treasurer for deposit into the operator training and certification fund created in section 3134.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 148, Imd. Eff. Sept. 21, 2011.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 299.2901 et seq. and R 299.2903 et seq. of the Michigan Administrative Code.

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

Sec. 4105. (1) The mayor of each city, the president of each village, the township supervisor of each

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township, the responsible executive officer of a governmental agency, and all other persons operating sewerage systems in this state shall file with the department a true copy of the plans and specifications of the entire sewerage system owned or operated by that person, including any filtration or other purification plant or treatment works as may be operated in connection with the sewerage system, and also plans and specifications of all alterations, additions, or improvements to the systems that may be made. The plans and specifications shall, in addition to all other requirements, show all the sources through or from which water is or may be at any time pumped or otherwise permitted to enter into the sewerage system, and the drain, watercourse, river, or lake into which sewage is to be discharged. The plans and specifications shall be certified by the mayor of a city, the president of a village, a responsible member of a partnership, an individual owner, or the proper officer of any other person that operates the sewerage system, as well as by the engineer, if any are employed by any such operator. The department may promulgate and enforce rules regarding the preparation and submission of plans and specifications and for the issuance and period of validity of construction permits for the work.

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

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

(4) If a person seeks confirmation of the department's verbal approval of a minor modification under subsection (3), the person shall notify the department electronically, at an address specified by the department, with a detailed description of the request for the modification. The department shall make reasonable efforts to respond within 2 business days, confirming whether the request has been approved or not approved. If the department has not responded within 2 business days after the department receives the detailed description, the verbal approval shall be considered confirmed.

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2006, Act 602, Imd. Eff. Jan. 3, 2007.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 299.2901 et seq. of the Michigan Administrative Code.

324.4106 Sewage treatment works; reports; false statement; penalty.

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

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

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

Popular name: Act 451

Popular name: NREPA

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

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

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

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

Popular name: Act 451

Popular name: NREPA

324.4108 Sewerage system; planning, construction and operation; cooperation; compliance; "private, investor-owned wastewater utility" defined.

Sec. 4108. (1) The department shall exercise due care to see that sewerage systems are properly planned, constructed, and operated to prevent unlawful pollution of the streams, lakes, and other water resources of the state. The department shall cooperate with appropriate federal or state agencies in the determination of grants of assistance for the preparation of plans or for the construction of waterworks systems, sewerage systems, or waste treatment projects, or both.

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—2005, Act 191, Imd. Eff. Nov. 7, 2005.

Popular name: Act 451

Popular name: NREPA

324.4109 Engineers and other assistants; employment.

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

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

Popular name: Act 451

Popular name: NREPA

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

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

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

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

(b) If the person violates this part or a provision of a permit or order issued under this part or rule promulgated under this part other than by failure to obtain a permit, the court shall impose a civil fine of not

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less than $500.00 or greater than $2,500.00 for the first violation, not less than $1,000.00 or greater than $5,000.00 for the second violation, and not less than $2,500.00 or greater than $10,000.00 for each subsequent violation. For the purposes of this subdivision, all violations of a specific construction permit are treated as a single violation.

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

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

(5) The attorney general shall enforce this part.

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2006, Act 602, Imd. Eff. Jan. 3, 2007.

Popular name: Act 451

Popular name: NREPA

324.4111 Actions brought by department.

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

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

Popular name: Act 451

Popular name: NREPA

324.4112 Expedited review process for certain projects.

Sec. 4112. (1) Subject to subsection (2), the following projects are eligible for expedited review:

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

(b) A simple pumping station and force main.

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

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

(3) To obtain an expedited review, a person shall do all of the following by September 30, 2019:

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

(b) Submit electronically a complete application for a construction permit including a request for expedited review and including, via credit card, the appropriate fee under subsection (4).

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

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

(4) Except as provided in subsection (6), the fee for an expedited review is as follows:

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

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

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

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

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

(5) Except as provided in subsection (7), if an applicant does not comply with subsection (3), the department shall not conduct an expedited review and any submitted fee shall not be refunded. Within 10 business days after receipt of the application, the department shall notify the applicant of the reasons why the

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department's review of the application will not be expedited. Upon receipt of this notification, a person may correct the deficiencies and resubmit an application and request for an expedited review with the appropriate fee specified under subsection (6). The department shall not reject a resubmitted application and request for expedited review solely because of deficiencies that the department failed to fully identify in the original application.

(6) For a second submission of an application that originally failed to meet the requirements specified in subsection (3), the applicant shall instead include a fee equal to 10% of the fee specified in subsection (4). However, if the deficiency included failure to pay the appropriate fee, the second submission shall include the balance of the appropriate fee plus 10% of the appropriate fee. If the applicant makes additional changes other than those items identified by the department as being deficient, the applicant shall instead include an additional fee equal to the fee specified in subsection (4). For the third and each subsequent submittal of an application that failed to meet the requirements specified in subsection (3), the applicant shall include an additional fee equal to the fee specified in subsection (4).

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

(8) The department shall review and make a decision on complete applications submitted with a request for expedited review within 10 business days of receipt by the department of a complete application. However, if the department waives the notification requirement of subsection (3)(a), the department shall review and make a decision on the application within 20 business days of receipt of a complete application.

(9) If the department fails to meet the deadline specified in subsection (8), the department shall continue to expedite the application review process for an application submitted under this section. However, the fee for an expedited review required under this section shall be refunded if the department fails to meet the deadline established in subsection (8).

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

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

History: Add. 2006, Act 602, Imd. Eff. Jan. 3, 2007;—Am. 2010, Act 302, Imd. Eff. Dec. 16, 2010;—Am. 2015, Act 82, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.4113 Infrastructure construction fund; administration of expedited review process; reports.

Sec. 4113. (1) The infrastructure construction fund is created within the state treasury.

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

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

(4) The department shall expend money from the fund, upon appropriation, only to administer this part and the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, including all of the following:

(a) Maintenance of program data.

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

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

(d) Program administration activities.

(5) By January 1 of each year until January 1, 2016, the department shall prepare and submit to the governor, the chairs of the standing committees of the senate and house of representatives with primary responsibility for issues related to natural resources and the environment, and the chairs of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the department's administration of the expedited review process under section 4112 and the expedited review process under section 4a of the safe drinking water act, 1976 PA 399, MCL

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325.1004a, in the previous fiscal year. This report shall include, at a minimum, all of the following as itemized for each expedited review process:

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

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

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

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

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

History: Add. 2006, Act 602, Imd. Eff. Jan. 3, 2007;—Am. 2010, Act 302, Imd. Eff. Dec. 16, 2010.

Popular name: Act 451

Popular name: NREPA

PART 43
WATERWORKS SYSTEMS, SEWERS, AND DISPOSAL PLANTS

324.4301 Waterworks systems, sewers, and disposal plants; acquisition, construction, equipping, operation, and maintenance; acquisition of land; powers of local units of government.

Sec. 4301. A local unit of government in this state, either individually or jointly by agreement with another local unit of government, may own, acquire, construct, equip, operate, and maintain, either within or outside of the statutory or corporate limits of the local unit or units of government, intercepting sewers, other sanitary and storm sewers, pumping stations, and a plant or plants for the treatment, processing, purification, and disposal in a sanitary manner approved by the department, of the liquid and solid wastes, refuse, sewage and night soil, storm water, and garbage of the local unit or units of government. A local unit of government, either individually or jointly by agreement with another local unit of government, may own, acquire, construct, equip, operate, and maintain either within or outside of the statutory or corporate limits of the local unit or units of government waterworks systems approved by the department of public health, including such facilities as water mains, treatment works, source facilities, pumping stations, reservoirs, storage tanks, and other appurtenances for the purpose of obtaining, treating, and delivering pure and wholesome water in adequate quantity to the local unit or units of government. They may acquire by gift, grant, purchase, or condemnation necessary lands either within or outside of the statutory or corporate limits of the local unit or units of government. However, a township shall not condemn land outside its corporate limits. For the purpose of acquiring property for the uses described in this part, the local unit of government has all the rights, powers, and privileges granted to public corporations under Act No. 149 of the Public Acts of 1911, being sections 213.21 to 213.25 of the Michigan Compiled Laws. These powers are in addition to any powers granted to the local unit of government by statute or charter.

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

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Surface Water Quality Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.4302 Waterworks systems, sewers, and disposal plants; mortgage bonds.

Sec. 4302. (1) The waterworks system, intercepting sewers, pumping stations, sewage disposal plant and system, transfer station, and garbage and refuse processing or disposal plant and system, are public utilities within the meaning of any constitutional or statutory provisions for the purpose of acquiring, purchasing, owning, operating, constructing, equipping, and maintaining the waterworks system, intercepting sewers, pumping stations, sewage disposal plant and system, transfer station, and garbage and refuse processing or disposal plant and system. A local unit of government may issue full faith and credit bonds or mortgage bonds for the purposes described in this part beyond the general limits of the bonded indebtedness prescribed by law except as provided in this section. The mortgage bonds as provided in this section shall not impose any general liability upon the local unit of government but shall be secured only on the property and revenues of the utility as provided in this section, including a franchise, stating the terms upon which the purchaser may operate the utility in case of foreclosure. The franchise shall not extend for a longer period than 20 years from the date of the sale on foreclosure. The total amount of mortgage bonds shall not exceed 60% of the original cost of the utility except as provided in this section. Bonds shall not be issued as general obligations of the

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local unit of government except upon a 3/5 affirmative vote of the qualified electors of the local unit of government and except as provided in this section, not in excess of 3% of the assessed valuation of the real and personal property of the local unit of government as shown by the last preceding tax roll. Bonds shall not be issued as full faith and credit bonds or mortgage bonds of the utility except upon a 3/5 affirmative vote of the legislative body of the local unit of government.

(2) Revenue bonds issued under this section are subject to the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140.

(3) Except for revenue bonds described in subsection (2), all other bonds and notes issued under this section are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 327, Imd. Eff. May 23, 2002.

Popular name: Act 451

Popular name: NREPA

324.4303 Waterworks systems, sewers, and disposal plants; supervision and control by local units of government; rules; establishment, certification, and assessment of rates or charges.

Sec. 4303. The legislative body of a local unit of government or the respective legislative bodies of the local units of government who have agreed to jointly own and operate waterworks systems, intercepting sewers, or sewage treatment plants, may create a separate board or may designate certain officials of the local unit or units of government to have the supervision and control of the waterworks systems, intercepting sewers, transfer stations, or sewage and refuse and garbage processing or disposal plants. The legislative body, respective legislative bodies, or the board may make all necessary rules governing the use, operation, and control of the facilities and systems. The legislative body or respective legislative bodies may establish just and equitable rates or charges to be paid to them for the use of the waterworks system or disposal or processing plant and system by each person whose premises are served, and the rates or charges may be certified to the tax assessor and assessed against the premises served and collected or returned in the same manner as other county or municipal taxes are certified, assessed, collected, and returned.

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

Popular name: Act 451

Popular name: NREPA

324.4304 Mortgage bonds; manner of payment; sinking fund.

Sec. 4304. Bonds that are issued and secured by a mortgage on the utility as provided in this part shall not be a general obligation of the local unit of government, but shall be paid only out of revenues received from the service charges as provided in section 4303 or from a sale of the property and franchises under a foreclosure of the mortgage. If a service rate is charged, a sufficient portion shall be set aside as a sinking fund for the payment of the interest on the bonds and the principal of the bonds at maturity.

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

Popular name: Act 451

Popular name: NREPA

324.4305 Sewers and disposal plants; granting franchise to private corporation.

Sec. 4305. Instead of owning and operating a sewer system and sewage disposal plant, transfer station, garbage or refuse collection, processing, and disposal plant or system as provided in section 4301, a local unit of government may grant a franchise for a period not to exceed 30 years to a private corporation organized under, or authorized by, the laws of this state to engage in such business, to build, construct, own, and operate a sewage or garbage and refuse processing or disposal system for the purpose of receiving and treating sewage and night soil, refuse, and garbage from the local unit or units of government. The franchise may authorize the corporation to charge each person owning property, from which the sewage, refuse, or garbage is received, a fee determined to be reasonable by the public service commission of this state, upon proper application made either by the corporation or local unit or units of government, and after holding a public hearing. The franchise may also grant to the corporation the right and privilege to provide collection services and to lay all intercepting and other sewers and connecting pipes in the streets and public alleys of the local unit or units of government as are necessary to receive, transfer, and conduct the sewage, garbage, or refuse to the processing or disposal plant and under reasonable rules, regulations, and supervision as are established by the local unit or units of government. The franchise is void unless approved by 3/5 of the electors of the local unit or units of government voting at a general or special election. This franchise shall not duplicate existing

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private solid waste management services or facilities that have been developed under part 115.

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

Popular name: Act 451

Popular name: NREPA

324.4306 Contract to receive, treat, transfer, and process sewage, night soil, garbage, and refuse; charges.

Sec. 4306. The local unit or units of government may enter into a contract with a person to receive, treat, transfer, and process in the manner provided in this part, the sewage, night soil, garbage, and refuse of the local unit or units of government. The contract may authorize the person to charge the owners of the premises served a service rate determined by the local unit or units of government to be just and reasonable, or the local unit or units of government may contract to pay a flat rate for the service, paid out of their general fund or funds, or assess the owners of the property served a reasonable charge to be collected as provided in this part and paid into a fund to be used to defray the contract charges.

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

Popular name: Act 451

Popular name: NREPA

324.4307 Sewage system, solid waste facility, or waterworks system; bonds generally.

Sec. 4307. (1) In accordance with and to the extent authorized by law, when the department, the department of public health, or a court of competent jurisdiction in this state has ordered, or when the department has issued a permit for, the installation, construction, alteration, improvement, or operation of a sewage system, solid waste facility, or waterworks system in a local unit of government, and the plans for the facility or system have been prepared and approved by the state department or commission having the authority by law to grant the approval, the legislative body or the respective legislative bodies of the local unit or units of government may issue and sell the necessary bonds for the construction, installation, alteration, operation, or improvement, including the treatment works, and other facilities as may be ordered or set forth in the permit as being necessary to provide for the effective operation of the system. This provision shall be construed to allow a local unit of government the option of selling bonds under a department order or permit, or of taking or permitting the matter to go into court and selling bonds under a court order. The legislative body or the respective legislative bodies shall determine the denomination of the bonds and the date, time, and manner of payment. The amount of the bonds either issued or outstanding shall not be included in the amount of bonds that the local unit or units of government are authorized to issue under any statutes of this state or charters. Local units of government issuing bonds under this section may raise a sum annually by taxation as the legislative body or respective legislative bodies consider necessary to pay interest on the bonds, and to pay the principal as it falls due. The annual amount may be in excess of the authorized annual tax rate fixed by statute or charter.

(2) Except as otherwise provided in this part, all bonds issued under this section are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. Court ordered bonds do not require approval of the electors and are not subject to section 5(g) of the home rule city act, 1909 PA 279, MCL 117.5, as to publication of notice, petition, and referendum. Bonds other than court ordered bonds issued under this part require approval of the electors at a general or special election only if an appropriate petition is filed as provided by law.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 213, Imd. Eff. Apr. 29, 2002.

Popular name: Act 451

Popular name: NREPA

324.4308 Waterworks systems, sewers, or disposal systems; court order; plans and specifications; authorization and issuance of bonds.

Sec. 4308. If an order is made by a court of competent jurisdiction pursuant to this part, the fact that the order was issued shall be recited in the official minutes of the legislative body or the respective legislative bodies. The body or bodies shall require that plans and specifications be prepared for a waterworks, sewage, garbage, or refuse transfer, processing, or disposal system, including the necessary other facilities. After the plans are approved by the legislative body or respective legislative bodies, they shall be submitted to the department of public health or the department for approval. If the plans are approved, the legislative body or respective legislative bodies shall authorize the issuance and sale of the necessary bonds to construct the proposed system or facilities in accordance with the approved plans.

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

Popular name: Act 451

Popular name: NREPA

324.4309 Construction of part.

Sec. 4309. The authority given by this part is in addition to and not in derogation of any power existing in any of the local units of government under any statutory or charter provisions which they may now have or may adopt.

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

Popular name: Act 451

Popular name: NREPA

324.4310 Waterworks systems, sewers, or disposal plants; court proceedings.

Sec. 4310. Proceedings under this part shall be taken only in a court of competent jurisdiction in the county in which the proposed waterworks system, interceptors, sewage, garbage, or refuse transfer, processing, or disposal plants are to be constructed.

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

Popular name: Act 451

Popular name: NREPA

324.4311 Waterworks systems, sewers, or disposal plants; agreements between local units of government and municipalities as to bonds.

Sec. 4311. If considered expedient for the safety and health of the people, local units of government may enter into agreement with each other to raise money and issue bonds to erect and maintain waterworks systems, intercepting sewers, sewage treatment plants, or garbage or refuse transfer, processing, or disposal systems.

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

Popular name: Act 451

Popular name: NREPA

324.4312 Local units of government; contract power; approval.

Sec. 4312. If local units of government desire to act under this part, the relationship established between such local units of government shall be fixed by contract and such contracts may be made by local units of government under this part in a manner and to the extent that natural persons might make contracts for like purposes. Such contracts before becoming operative shall be approved by a vote of the majority of the members elect of each of the respective legislative bodies of the local units of government operating under this part.

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

Popular name: Act 451

Popular name: NREPA

PART 45
BONDS FOR PREVENTION AND ABATEMENT OF WATER POLLUTION

324.4501 “Municipality” defined.

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

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

Popular name: Act 451

Popular name: NREPA

324.4502 Legislative determinations.

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

(a) That it is essential for the public health, safety, and welfare of the state and the residents of the state to undertake a complete program of construction of facilities to abate and prevent pollution of the water in and

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adjoining the state, the program to be undertaken by the state in cooperation with any municipalities and with such aid from the United States government or its agencies as is available.

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

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

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

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

Popular name: Act 451

Popular name: NREPA

324.4503 Bond issuance; authorization; amount; purpose.

Sec. 4503. The state shall borrow the sum of $335,000,000.00 and issue the general obligation bonds of the state, pledging the faith and credit of the state for the payment of the principal and interest on the bonds, for the purpose of providing money for the planning, acquisition, and construction of facilities for the prevention and abatement of water pollution, consisting of trunk and interceptor sewers, sewage treatment plants and facilities, improvements and additions to existing sewage treatment plants and facilities, and such other structures, devices, or facilities as will prevent or abate water pollution, and for the making of grants, loans, and advances to municipalities, in accordance with conditions, methods, and procedures established by law.

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

Popular name: Act 451

Popular name: NREPA

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

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

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

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

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2002, Act 248, Imd. Eff. Apr. 30, 2002.

Popular name: Act 451

Popular name: NREPA

324.4505 Revenues; disposition.

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

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

Popular name: Act 451

Popular name: NREPA

324.4506 Bonds; negotiability; tax exempt.

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

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

Popular name: Act 451

Popular name: NREPA

324.4507 Legal investments.

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

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

Popular name: Act 451

Popular name: NREPA

324.4508 Bonds; question; submission to electors; ballot; form.

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

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

Yes [ ]

No [ ]".

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

Popular name: Act 451

Popular name: NREPA

324.4509 Submission to electors.

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

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

Popular name: Act 451

Popular name: NREPA

324.4510 Bonds; appropriation to make prompt payment.

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

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

Popular name: Act 451

Popular name: NREPA

324.4511 Approval of electors.

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

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

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Popular name: Act 451

Popular name: NREPA

PART 47

SEWAGE DISPOSAL AND WATER SUPPLY DISTRICTS

324.4701 Definitions.

Sec. 4701. As used in this part:

(a) "Due notice" means notice published at least twice, with an interval of at least 7 days between the 2 publication dates, in a newspaper or other publication of general circulation within the appropriate area or, if a publication of general circulation is not available, by posting at a reasonable number of conspicuous places within the appropriate area. Posting shall include, if possible, posting at public places where it may be customary to post notices concerning county or municipal affairs. At any hearing held pursuant to the notice and at the time and place designated in the notice, adjournment may be made without renewing the notice for an adjournment date.

(b) "Municipality" includes a metropolitan district, a water or sewer authority created by law, or a county, township, charter township, incorporated city, or incorporated village. An incorporated village, for the purposes of this part, is a governmental unit separate and distinct from the township or townships in which it is located.

(c) "Sewage disposal systems" includes all interceptor sewers, storm sewers, sanitary sewers, combined sanitary and storm sewers, sewage treatment plants, and all other plants, works, instrumentalities, and properties used or useful in connection with the collection, treatment, and disposal of sewage and industrial wastes.

(d) "United States or agencies of the United States" includes the United States of America or any bureau, department, agency, or instrumentality of the United States or otherwise created by the congress of the United States.

(e) "Water supply and sewage disposal district" means a governmental subdivision of this state and a public body corporate and politic organized in accordance with this part for the purpose, with the powers, and subject to the restrictions in this part.

(f) "Water supply system" includes all plants, work, instrumentalities, and properties used or useful in connection with obtaining a water supply, the treatment of water, and the distribution of water.

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

Popular name: Act 451

Popular name: NREPA

324.4702 Department of natural resources; powers and duties.

Sec. 4702. The department under this part has all of the following powers and duties:

(a) To foster and encourage the organization of sewage disposal and water supply districts, to act as the administrative agency in the proceedings incident to the formation of districts, and to offer and lend appropriate assistance to the directors of districts organized as provided in this part in the carrying out of any of their powers, functions, and programs.

(b) To cooperate, negotiate, and enter into contracts with the other governments, governmental units and agencies in matters concerning water supply systems and sewage disposal systems; to take steps and perform acts and execute documents as may be necessary to take advantage of any act enacted by the congress of the United States that may make available funds for any of the purposes enumerated in this part or be otherwise of assistance in carrying out the purposes of this part; to disburse money that may be appropriated by the legislature for the use and benefit of the districts created under this part or municipalities or local units of government of this state in accordance with the formula prescribed in this part or in the acts of appropriation; and to disburse money that may be received by this state from the United States government for the purposes provided for in this part in accordance with the formula set forth by applicable acts of congress.

(c) To act as the fiscal agent for this state for the purpose of making available to local units of government and the districts as may be organized under this part money or instruments of indebtedness that may be approved by the legislature or the people of this state for the construction and operation of sewage disposal systems by local units of government or districts.

(d) To coordinate its duties and functions with similar or related duties and functions that are performed by other state agencies or governmental units to coordinate and cooperate efforts to accomplish the purposes of this part.

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

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Popular name: Act 451

Popular name: NREPA

324.4703 Sewage disposal and water supply districts; joint municipal action to form district; filing, contents, and consolidation of petition.

Sec. 4703. (1) Two or more municipalities, by resolution of their legislative bodies, may file a petition with the department requesting that a sewage disposal district or a water supply district or a combination of both be organized to function in the area described in the petition. The petition shall set forth all of the following:

(a) The proposed name of the district.

(b) That there is need in the interests of public health and welfare for the district to function in the area described in the petition.

(c) A description of the area proposed to be organized as a district. The description is not required to be given by metes and bounds or by legal subdivision, but is sufficient if the description is generally accurate and designates the local units of governments comprised within the proposed district. The territory shall include only area within the boundaries of the petitioning municipality.

(d) A request that a referendum be held within the defined territory on the question of creation of the district in the territory, and that the agency create the requested district.

(2) When more than 1 petition is filed covering a portion of the same territory, the agency may consolidate all or any of the petitions.

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

Popular name: Act 451

Popular name: NREPA

324.4704 Sewage disposal and water supply districts; petition; hearing; notice; adjournment; determination as to territory affected.

Sec. 4704. Within 30 days after a petition is filed with the department, or later if authorized by the department, but not to exceed 90 days, the department shall cause due notice to be given of a hearing upon the question of the desirability and necessity in the interests of public health and welfare of the creation of the district, upon the question of appropriate boundaries to be assigned to the district, upon the propriety of the petition and of the proceedings taken under this part, and upon all other questions relative to this matter. All interested parties have the right to attend the hearings and be heard. Due notice of the time and place of holding the hearing shall be given to all of the executive officials of the municipalities included within the involved territory. If it appears upon the hearing that it is desirable to include within the proposed district territory outside of the area within which due notice has been given, or if it is made to appear that more data or information is needed, the hearing shall be publicly adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion in the district and a further hearing held. The department shall cooperate to the fullest extent possible with the local units of government included within the territorial limits of the proposed district in the making of the necessary investigations and engineering and financial studies that may be required for the proper decisions to be made by the department upon the conclusion of the hearing. After the hearing, if the department determines upon the facts presented and upon other relevant facts and information as may be available to it that there is need in the interests of public health and welfare for a sewage disposal or water supply district, or both, to be created and to function in the territory considered at the hearing, it shall make and record this determination and shall define the boundaries of the districts by the territorial limits of municipalities included within the district or by metes and bounds. In making the determination and in defining the boundaries, the department may give due weight and consideration to the physical and topographical conditions of the area considered, availability or nonavailability of water resources, engineering and economic feasibility of the construction and management of the works required, and all other relevant and pertinent facts that may be brought to its attention or of which it may have knowledge. Such additional territory shall not be included without the approval by resolution of the legislative body of any municipality affected, including the original petitioners.

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

Popular name: Act 451

Popular name: NREPA

324.4705 Sewage disposal and water supply districts; hearing; determination of no necessity; record; determination of necessity; referendum; rules; creation of authority; application; petitions to include additional territory; legal status of district; certificate.

Sec. 4705. (1) If the department determines after the hearing that there is no need for a district to be formed

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in the territory considered at the hearing and that the operation of the district within the defined boundaries is not practicable and feasible from the standpoint of engineering, administration, and financing, the department shall make and record the determination and shall deny any petition filed with it.

(2) If the department has made and recorded a determination that in the interests of public health and welfare there is a need for the formation, organization, and functioning of a district in a particular territory and has defined the boundaries of the district, it shall consider the question of whether the operation of that district within the boundaries with the powers conferred upon districts in this part is desired by a majority of the electors within the boundaries of the district. To assist the department in the determination of this question, it is the duty of the department, within a reasonable time of entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries of the district, to order a referendum within the proposed district upon the proposition of the creation of the district and to order the municipalities affected to cause due notice of the referendum to be given. The department shall direct the officials in charge of the holding of elections in the local units of government included within the district to call a special election or to place the referendum on the ballot at the next general election to be held in all of the territory comprising the district. The question shall be submitted by ballots prepared by the department that shall succinctly describe the district proposed to be formed, the area in which it shall function, and in appropriate language require those voting on the proposition to vote for or against the creation of the district, in accordance with the requirements of law for the holding of referendums on state questions. Municipalities affected are responsible for the costs of the preparation of the ballots. Only electors who have property assessed for taxes within the boundaries of the district are eligible to vote in the referendum. Upon the completion of the referendum, the department shall publish the result of the referendum.

(3) The department shall pay all expenses for the issuance of the notice and the conduct of the hearings described in this section and shall supervise the conduct of the hearings. The referendum shall be held by the regular established election officials and any costs shall be borne by the affected municipalities. The department shall promulgate rules governing the conduct of the hearings.

(4) If the results of the referendum described in subsection (3) call for the formation of the proposed district, the department shall call a conference of all the officials of all of the municipalities within the boundaries of the proposed district and the department shall make every effort to encourage the municipalities to incorporate an authority for the purpose of constructing and operating a sewage disposal system or water supply system under the terms and authority vested in the municipalities pursuant to law. If after the expiration of 180 days from the holding of the conference or within an additional period as the department may consider necessary, the municipalities have not created an authority as provided in this part, the department shall make, file, and publish as provided in this part a determination creating the district as contained in the application and as approved by the referendum.

(5) Upon the making and filing of the determination as described in subsection (4), due notice shall be served and published and the department shall appoint 5 directors who, for the purpose of this part, are electors within the territory comprising the district and who shall comprise a temporary governing body of the district. The members of the temporary governing body shall hold office until the officers of the first permanent governing body have been elected and qualified.

(6) The district shall be a governmental subdivision of this state and a public body corporate when the appointed directors present to the secretary of state an application signed by them that sets forth all of the following:

(a) That a petition for the creation of the district was filed with the department pursuant to this part, that the proceedings specified in this part were taken, that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body corporate under this part, and that the applicants are the temporary directors of the district.

(b) The name and official residence of each of the directors together with a certification of their appointment.

(c) The name which is proposed for the district.

(d) The location of the present office that has been selected for the district by the directors.

(7) The application shall be subscribed and sworn to by at least a majority of the directors before an officer authorized by the laws of the state to administer oaths. The officer shall certify upon the application that he or she personally knows the directors and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a certified statement made by the department that a petition was filed, notice issued, and hearing held as required in this part; that the department determined that there is need in the interests of the public health and welfare for a district to function in the proposed territory; that the boundaries are defined; that notice was given and referendum held in the question of creation of the district; that the result of the referendum showed a majority of the votes cast in the referendum to be in favor of the creation of

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such a district; and that the department did determine that the operation of the proposed district is administratively practicable and feasible. In addition, the statement shall set forth the boundaries of the district.

(8) The secretary of state shall examine the application and statement and, if he or she finds that the name proposed for the district is not identical with any similar district of this state or so nearly identical as to lead to confusion or uncertainty, the secretary of state shall receive and file the application and statement and shall record them in an appropriate book of record in the office of the secretary of state. When the application and statement have been made, filed, and recorded as provided in this section, the district shall constitute a governmental subdivision of this state and a public body corporate. The secretary of state shall make and issue to the directors a certificate under the seal of the state of the due organization of the district and shall record such certificate with the application and statement.

(9) Petitions for including additional territory within a district may be filed with the department and the proceedings provided for in this part or petitions to organize a district shall be observed in the case of petitions for inclusion. The department shall prescribe the form for the petitions, which shall be as nearly as possible to the form prescribed in this part for petitions to organize a district. The petition shall be filed with the department and upon its receipt it shall be referred to the governing body of the district to be affected by the petition and if, after due consideration, the governing body determines against the inclusion of the additional territory, the petition shall be denied.

(10) In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract, proceeding, or action of the district, the district shall be considered to be legally established in accordance with this part upon proof of the issuance of the certificate by the secretary of state. The certificate of the secretary of state shall be admissible in evidence in any suit, action, or proceeding described in this subsection and shall be proof of the filing and contents of the certificate.

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

Popular name: Act 451

Popular name: NREPA

324.4706 Permanent governing body; nomination, election, and terms of directors; certification of election; vacancy; conducting business at public meeting; notice of meeting; quorum; concurrence of majority for determination; expenses.

Sec. 4706. (1) The first permanent governing body of the district after the district has been organized and has received the secretary of state certificate described in section 4705 shall consist of 5 directors. The directors shall be nominated and elected at the next general state election in the same manner and pursuant to the election laws applicable to members of the house of representatives.

(2) Except for the first directors, the directors shall hold office for a term of 6 years. Among the first directors to be elected, the 2 receiving the highest number of votes shall hold office for the full term of 6 years and the 3 receiving the next highest number of votes shall hold office for 4 years. The secretary of state shall be responsible for the certification of the election of the directors. A vacancy shall be filled by appointment made by the remaining directors for the unexpired term.

(3) The business which the directors may perform shall be conducted at a public meeting of the directors held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. A majority of the directors constitutes a quorum for the transaction of business and the concurrence of a majority of the total number of directors in a matter shall be required for the matter's determination. A director shall not receive compensation for services, but shall be reimbursed for expenses necessarily incurred in the discharge of his or her duties.

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

Popular name: Act 451

Popular name: NREPA

324.4707 Employment of executive secretary, technical experts, officers, agents, and employees; qualifications, duties, and compensation; delegation of powers and duties; furnishing copies of documents and other information; availability of writings to public; execution of surety bonds; records; annual audit; designation of representatives to advise and consult on questions of program and policy.

Sec. 4707. (1) The directors may employ an executive secretary, technical experts, and other officers, agents, and employees, permanent or temporary, as required, and shall determine their qualifications, duties,

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and compensation. The directors may delegate to the chairperson, to 1 or more directors, or to 1 or more agents or employees, powers and duties as they consider proper.

(2) The directors shall furnish to the department upon request copies of all rules, orders, contracts, forms, minutes, proceedings, and other documents that they adopt or employ and other information concerning their activities as required by the department in the performance of the department's duties under this part. A writing prepared, owned, used, in the possession of, or retained by the directors in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(3) The directors shall provide for the execution of surety bonds for employees and officers entrusted with funds or property; shall provide for the keeping of a full and accurate record of their proceedings and of rules and orders promulgated or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. The directors shall request that the legislative body and executive officers of a municipality located within the territory comprised within the district designate a representative to advise and consult with the directors of the district on questions of program and policy that may affect the property, water supply, or sewage disposal problems, or other interests of the municipality.

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

Popular name: Act 451

Popular name: NREPA

324.4708 Sewage disposal and water supply districts; powers.

Sec. 4708. A district organized under this part constitutes a governmental subdivision of this state and a body corporate, exercising public powers, with power to sue and to be sued in any court of this state. A district shall possess all the powers necessary to organize itself and also shall possess powers incident to the powers enumerated in this part. The district is authorized and empowered to do all of the following:

(a) Pursuant to the terms of any contract entered into under section 4709 of this part, to construct and operate sewage disposal systems and water supply systems within the area comprising its territorial limits and to acquire, extend, and improve the systems.

(b) To make and cause to be made surveys, studies, and investigations of water resources of the area within its territorial limits for the purpose of determining the feasibility and practicability of developing new sources of water supply to municipalities, industrial and commercial establishments, and agricultural and residential lands and areas so that water is available to agricultural and residential lands in a quantity and quality necessary for the protection of the public health and the promotion of the general welfare within the areas.

(c) To make and cause to be made surveys, studies, and investigations for the purpose of ascertaining the requirements of municipalities, industrial and commercial establishments, individual and collective groups, or occupants of lands for sewage disposal systems so that sewers and sewage disposal facilities are available to the entities described in this subdivision that are situated within the territorial limits of the district and that may need or require the facilities for the protection of public health and the promotion of the general welfare.

(d) To cooperate with and enter into agreements with any person as may be necessary for the full performance of its functions and duties and to acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests in property, either within or outside of its territorial limits; to maintain, administer, and improve any acquired properties; to receive income from same and to expend the income in implementing this part and its purposes; and to sell, lease, or otherwise dispose of any of its property or interests in property to implement this part and its purposes. The district is invested with the power of eminent domain in acquiring private property for public use. For the purposes of exercising the power, the district may proceed under Act No. 149 of the Public Acts of 1911, being sections 213.21 to 213.25 of the Michigan Compiled Laws, or any other statute that grants to any municipality or public body the authority to acquire private property for public use.

(e) To accept and receive money as may be appropriated to the district by the legislature of this state.

(f) To accept and receive any funds or money which may be appropriated by any act of congress either directly from any federal governmental agency responsible for the disbursement and allocation of the funds or through the department and for that purpose the districts are authorized to execute contracts, documents, or agreements as may be required by the congressional act as a prerequisite to the securing of the funds.

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

Popular name: Act 451

Popular name: NREPA

324.4709 Sewage disposal and water supply districts; contracts with municipalities; construction, improvement, enlargement, extension, operation, and financing; pledge of

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payment; resolution; approval by electors; issuance of bonds.

Sec. 4709. (1) The district may enter into contracts with any municipality located within its territorial limits providing for the acquisition, construction, improvement, enlargement, extension, operation, and financing of a sewage disposal system or water supply system. A contract shall provide for the allocation and payment of the share of the total cost to be borne by the municipality in annual installments for a period not exceeding 40 years. Each contracting municipality may pledge its full faith and credit for the payment of the obligation in the manner and times specified in the contract. The district shall make a reasonable charge for its services that it renders to the users in order to cover the retirement of outstanding indebtedness, costs of operation, maintenance, and replacement of its plants and reserves for capital improvements. If there is excess money in the treasury of the district after all of the contingencies have been met, the excess shall be rebated to the contracting municipalities in proportion to the total amount that the municipality paid for services it has received from the district. No limitation in any statute or charter shall prevent the levy and collection by each of the contracting municipalities of the full amount of taxes necessary for the payment of the contractual obligation. These funds may be raised by each contracting municipality by the use of 1 or more of the following methods:

(a) The levy of special assessments on property benefited by the sewage disposal system or water supply system. The procedures relative to the levying and collection of the special assessments shall conform as near as may be to applicable charter or statutory provisions.

(b) The levy and collection of rates or charges to users and beneficiaries of the service or services furnished by the sewage disposal system or water supply system.

(c) From money received, or to be received, derived from the imposition of taxes by this state, unless the money for this purpose is expressly prohibited by the state constitution of 1963.

(d) From any other fund or funds that may be validly used for the purpose. The contract may provide for any and all matters relating to the acquisition, construction, operation, and financing of the sewage disposal system or water supply system as are considered necessary, including authorization to the district to issue bonds secured by the full faith and credit pledges of the contracting municipalities, as authorized in this part. The contract may provide for appropriate remedies in case of default, including, but not limited to, the right of the municipalities to authorize the county treasurer or other official charged with the disbursement of funds derived from the state sales tax levy under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, to withhold sufficient funds to make up any default or deficiency in funds.

(2) A municipality desiring to enter into a contract with the district under this section shall authorize, by resolution of its governing body, the execution of the contract. The resolution shall be published in 1 or more newspapers of general circulation within the municipality, and the contract may be executed without a vote of the electors upon the expiration of 30 days after the date of the publication unless, within the 30-day period, a petition signed by not less than 10% of the registered electors residing within the limits of the municipality is filed with the clerk of the municipality requesting a referendum upon the execution of the contract. If this occurs, the contract shall not be executed until approval by the vote of a majority of the electors of the municipality qualified to vote and voting at a general or special election to be held not more than 90 days after the filing of the petition. A special election called for this purpose shall not be included in any statutory or charter limitation as to the number of special elections to be called within any period of time. Signatures on any petition shall be verified by some person under oath, as the actual signatures of the persons whose names are signed on the petition, and the clerk of the municipality has the same power to reject signatures as city clerks under section 25 of the home rule city act, 1909 PA 279, MCL 117.25. The number of registered electors in a municipality is determined by the registration books as of the date of the filing of the petition.

(3) To obtain funds to acquire, construct, improve, enlarge, or extend the sewage disposal system or water supply system authorized by this part, the district, after the execution of the contract or contracts authorized by this part, upon ordinance or resolution adopted by the district, may issue its negotiable bonds secured by the full faith and credit pledges made by each contracting municipality pursuant to authorization contained in this part and the contracts entered into pursuant to this part. Except as otherwise provided in this part, bonds are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The ordinance or resolution authorizing the issuance of the bonds shall include the terms of the contracts.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 214, Imd. Eff. Apr. 29, 2002.

Popular name: Act 451

Popular name: NREPA

324.4710 Sewage disposal and water supply districts; contract sewage treatment; income; application.

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Sec. 4710. The district may enter into a contract for the furnishing of sewage treatment services by any sewage treatment plant owned or operated by the district as a part of its sewage disposal system or the furnishing of water service from any water facilities owned or operated by the district. This contract shall provide for reasonable charges or rates for the service furnished. Any income derived from a contract described in this section shall be applied by the district to the costs of operation and maintenance of its sewage disposal system or its water supply system, and any balances remaining after payment of its cost shall be applied in reduction of its outstanding bonded indebtedness incurred for the acquisition or improvement of its sewage disposal system or water supply system. A contract shall not exceed a period of 40 years.

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

Popular name: Act 451

Popular name: NREPA

324.4711 Detachment of territory from participating municipality; contractual obligations; bonds; redemption.

Sec. 4711. If territory that is part of a district created under this part is detached from a municipality and transferred to a municipality that is not part of the district, the territory shall remain a part of the municipality from which detached only for the purpose of carrying out any contractual obligations or for the purpose of levying a tax to retire any bonded indebtedness incurred by such district for which the territory is liable until the contractual obligations are fulfilled or the bonds are redeemed or sufficient funds are available in the district's debt retirement fund for this purpose. A territory described in this section is a part of the municipality to which transferred for all other purposes and subsequent to the redemption of the bonds or the time when sufficient funds are available to redeem the bonds, the territory is no longer a part of the district.

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

Popular name: Act 451

Popular name: NREPA

324.4712 Existing systems; self-liquidating revenue bonds.

Sec. 4712. If the governing body of a district formed under this part acquires, extends, improves, or operates a sewage disposal system or water supply system or provides for the sale and purchase of sewage disposal service or water supply service from an existing system or systems and executes contracts that may be necessary, the authority may, pursuant to any contract entered into under section 4709, issue self-liquidating revenue bonds in accordance with the revenue bond act of 1933, Act No. 94 of the Public Acts of 1933, being sections 141.101 to 141.140 of the Michigan Compiled Laws, or any other act providing for the issuance of revenue bonds. However, these bonds are payable solely from the revenues of the sewage disposal system or the water supply system. The charges specified in any contract are subject to increase by the district at any time if necessary to provide funds to meet its obligations and any contract authorized by this part is for a period of not more than 40 years. The legislative body of any municipality that enters into a contract with the district may raise by taxes or pay from its general funds any money required to be paid under the terms of the contract to obtain maps, plans, designs, specifications, and cost estimates of the proposed sewage disposal system or water supply system.

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

Popular name: Act 451

Popular name: NREPA

PART 49
CONSTRUCTION OF COLLECTING SEWERS

324.4901 Definitions.

Sec. 4901. As used in this part:

(a) “Collecting sewers” means lateral, branch, submain, and trunk sewers consisting of pipes or conduits including pumps, lift stations, force mains, and other appurtenances necessary for a system to prevent or eliminate discharges of raw or inadequately treated sewage of human origin into any waters of the state. Collecting sewers do not include pipes or conduits that carry storm water, surface water, and street wash, or that convey sewage from a building to a common public sewer except that part lying within a public right-of-way; and sewers eligible for grants under Act No. 329 of the Public Acts of 1966, being sections 323.111 to 323.128 of the Michigan Compiled Laws.

(b) “Construction” means the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other similar actions

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necessary to the construction of collecting sewers; the installation, erection, and building of collecting sewers; and the inspection and supervision of the construction of such sewers. Construction does not include acquisition of lands and rights-of-way.

(c) "Local agencies" means local units of government or other public bodies created by or pursuant to state law and having jurisdiction over collecting sewers.

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

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.4902 State sewer construction fund; grants; funding.

Sec. 4902. Grants to local agencies shall be funded from the state sewer construction fund for collecting sewer projects in the descending order of their priority as established by the department under sections 4909 to 4912.

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

Popular name: Act 451

Popular name: NREPA

324.4903 State sewer construction fund; establishment; eligibility.

Sec. 4903. A fund to be known as the state sewer construction fund is established to be used for state grants to local agencies for their construction of collecting sewers. Grants shall be made only for collecting sewers on which contracts for construction were awarded prior to the exhaustion of the fund.

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

Popular name: Act 451

Popular name: NREPA

324.4904 State sewer construction fund; disposition.

Sec. 4904. The proceeds of the sale of $50,000,000.00 of the bonds authorized by former Act No. 76 of the Public Acts of 1968 or part 45, or any series of the bonds, and any premiums and accrued interest received on the delivery of the bonds, shall be deposited with the state treasurer in the state sewer construction fund. Disbursements from the fund shall be made only for specific eligible collecting sewer projects approved, as provided in section 4912, by the appropriations committees and by the legislature by concurrent resolution adopted by a roll call vote of a majority of the members elected to and serving in each house. A concurrent resolution shall include all or part of the projects on the priority list of eligible projects reported to the legislature by the department as provided in section 4912, but in case of a part only it shall be the entire part containing all projects on the list having priorities higher than those of projects not included in the resolution and shall not include projects lower in the order of priority. The income from temporary investments of the proceeds shall be deposited in the general fund.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.4905 Grants; application; amount; limitations.

Sec. 4905. (1) A local agency may apply to the department for a grant under this part.

(2) A grant shall be made in an amount equal to 1/2 that portion of the cost of construction of collecting sewers, computed upon the cost of the current year's project only, in excess of 10% of the state equalized value of all taxable property within the political boundaries of the unit of government served by the collecting sewers certified under subsection (2) of section 4906 or $1,000,000.00, whichever is less.

(3) Grants are subject to the following limitations:

(a) A grant shall not be made for collecting sewers required under the subdivision control act of 1967, Act No. 288 of the Public Acts of 1967, being sections 560.101 to 560.293 of the Michigan Compiled Laws.

(b) A grant shall not be made for collecting sewers for which a federal grant has been made if the amount of the federal grant equals or exceeds the amount of the state grant that the collecting sewers would have received if there had been no federal grant. If the amount of the federal grant made for the collecting sewers is less than the amount of the state grant that the collecting sewers would have received if there had not been a federal grant, the amount of the state grant made for the collecting sewers shall not exceed the difference

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between the state grant that the collecting sewers would have received if there had not been a federal grant, and the federal grant.

(c) A grant shall not be made for collecting sewers, the construction of which would result in the discharge of untreated or inadequately treated sewage to the waters of the state.

(d) A grant shall not be made unless the local agency has received approval by the department of an official pollution control plan as required by sections 7 and 8 of Act No. 329 of the Public Acts of 1966, being sections 323.117 and 323.118 of the Michigan Compiled Laws, and the collecting sewers are in conformity with the official plan.

(e) A grant shall not be made for collecting sewers which the department determines would not meet an existing or imminent need or would constitute a noneconomic or speculative project.

(f) A local agency shall not be allotted more than 2% of the fund.

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

Popular name: Act 451

Popular name: NREPA

324.4906 State sewer construction fund; disbursements.

Sec. 4906. (1) Disbursements from the state sewer construction fund shall be made by the director of the department of management and budget and the state treasurer in accordance with the accounting laws of the state only for the following purposes for which the bonds have been authorized:

(a) Expense of issuing the bonds.

(b) Grants to local agencies as provided in section 4905(2) and (3).

(2) Before any disbursement from the fund, as provided in subsection (3), is made to a local agency for a grant for the construction of collecting sewers, the department shall certify to the director of the department of management and budget and the state treasurer the amount of the grant which the agency is eligible to receive under this part. The certificate shall include or have attached to it a certificate by the department, or by the department of public health when so requested by the department, of the necessity and sufficiency of the collecting sewers.

(3) A disbursement from the fund to a local agency shall be made for projects on the priority list established under sections 4904 and 4912 upon certification to the director of the department of management and budget and the state treasurer by the department that the disbursement is due. A local agency may request and receive disbursement of the state grant in not more than 5 installments:

(a) An installment of 50% of the reasonable cost for preparing completed final construction plans and specifications, but not to exceed the amount of the grant, for the collecting sewers which have been certified as eligible for a state grant, on issuance of a construction permit by the department of public health for the collecting sewers for which the construction plans and specifications have been prepared and on receipt of evidence satisfactory to the department of the local agency's ability and intent to finance the local share of the project cost. A disbursement shall not be made under this subsection to a local agency which has received federal or other state grants for the preparation of final plans and specifications.

(b) An installment when not less than 25% of the cost of construction of the collecting sewers is completed.

(c) An installment when not less than 50% of the cost of construction of the collecting sewers is completed.

(d) An installment when not less than 75% of the cost of construction of the collecting sewers is completed.

(e) A final installment of the unpaid balance of the grant based upon the actual cost of the collecting sewers when construction is completed.

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

Popular name: Act 451

Popular name: NREPA

324.4907 Rules.

Sec. 4907. The department may promulgate rules to implement this part.

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

Popular name: Act 451

Popular name: NREPA

324.4908 State agencies; officers and employees; use; purpose; grant recipients; records.

Sec. 4908. (1) The department, with consent of the head of any other agency of this state, shall use the

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officers and employees of such agency as may be found necessary to assist in carrying out the purposes of this part.

(2) A recipient of a grant under this part shall keep records as the department prescribes, including records that fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of construction of the collecting sewers in connection with the grant given or used, and the amount of that portion of the cost of construction of the collecting sewers supplied by other sources, and other records as will facilitate an effective audit. The department, the auditor general, and the state treasurer or any of their duly authorized representatives shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipient that are pertinent to grants received under this part.

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

Popular name: Act 451

Popular name: NREPA

324.4909 Priority establishment and project certification procedures; compliance prerequisite to grant.

Sec. 4909. Notwithstanding any other provision of this part or of any rule of the department, compliance with sections 4909 to 4912 is a prerequisite to the making of a grant under this part. Sections 4909 to 4912 provide procedures for establishing the priority of eligible projects and for certifying projects for grants for construction of collecting sewers.

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

Popular name: Act 451

Popular name: NREPA

324.4910 Collecting sewer projects; pollution control needs; assignment of points.

Sec. 4910. (1) Points assigned to a collecting sewer project as a complete measure of pollution control needs shall not exceed 15.

(2) Two points shall be assigned for each of the following interests subject to pollution-caused injuries, which injuries will be corrected or substantially lessened by the proposed project:

(a) Public health, safety, or welfare, but not including bathing.

(b) Public water supply for domestic use.

(c) Water supply for commercial or industrial use.

(d) Irrigation or livestock water supply for agricultural use.

(e) Organized public recreational use including bathing.

(f) Aesthetic value or utility of riparian lands.

(g) Water supply for wild animals, birds, and fish and adverse effects on aquatic life or plants.

(h) Usefulness of fish or game for human consumption.

(3) Collecting sewers required to be constructed in compliance with a judgment rendered by a court of competent jurisdiction, a stipulation or an order of the department, or an agreement with the department of public health shall be assigned from 1 to 4 points in accordance with the following schedule, if the stipulation, order, or agreement specifically recites the existence of unlawful pollution and was in effect not less than 30 days before the deadline for filing applications and if the pollution abatement date is such that compliance would make it necessary to start construction during the year ending:

(a) June 30 of the fiscal year for which the application is filed, 4 points.

(b) June 30 of the first succeeding fiscal year, 3 points.

(c) June 30 of the second succeeding fiscal year, 2 points.

(d) June 30 of the third succeeding fiscal year, 1 point.

(4) An applicant in default of a performance date specified by an order, stipulation, or agreement may be assigned points under the preceding schedule only at the discretion of the department.

(5) A collecting sewer project for which construction contracts were awarded before the deadline date for filing applications shall be assigned 4 points. The combined total points assigned pursuant to subsections (3) to (5) shall not exceed 4 points.

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

Popular name: Act 451

Popular name: NREPA

324.4911 Total priority points; computation; tied projects; assignment of priority.

Sec. 4911. (1) Total priority points for a collecting sewer project shall be the sum of the points assigned for water pollution control needs.

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(2) If 2 or more projects receive the same priority point totals, the department shall assign priorities to the tied projects after considering factors such as waters affected, extent of public interests involved, relative magnitude of pollution injury, and other factors as the department considers appropriate.

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

Popular name: Act 451

Popular name: NREPA

324.4912 Fiscal year; filing application for grant; assignment of point total; certification of projects; condition of certification; time extensions; validity of application; report to legislature; approval or rejection of projects.

Sec. 4912. (1) For the purposes of sections 4909 to 4912, the fiscal year is July 1 to June 30.

(2) Applications for collecting sewer construction grants and official pollution control plans required by sections 7 and 8 of Act No. 329 of the Public Acts of 1966, being sections 323.117 and 323.118 of the Michigan Compiled Laws, shall be filed with the department not later than September 15 preceding the period or fiscal year for which the application is filed. Applications postmarked not later than midnight of September 15 meet this requirement.

(3) A point total shall be assigned by the department to each application that has been timely filed and conforms to the requirements of this part no later than the following January 1.

(4) Projects entitled to construction grants shall be certified to the director of the department of management and budget and the state treasurer from the eligibility list established by the department and as approved by the legislature. Certification shall be made following approval by the legislature.

(5) Certification of a project for a grant is subject to the condition that construction contracts for the project be awarded not later than March 1 of the fiscal year for which application for a state grant has been filed. Failure to comply with this condition of certification is cause for the department to take any action necessary to withdraw any grant offer that may have been obligated to such project. However, on a showing satisfactory to the department that the project will proceed within an extended period, the department may allow 30-day extensions totaling not more than 90 days.

(6) Except as otherwise provided in this part, an application for a collecting sewer construction grant filed with the department is valid only for the fiscal year for which the application is filed.

(7) The department shall report to the legislature by January 15 of each year a list of collecting sewer projects eligible for grants, the points and priorities assigned to them pursuant to this part, a list of projects that are recommended to be funded, and a list of projects which failed to comply with the conditions of certifications set forth in subsection (5) and on which the department has taken action to withdraw offers of state grants. If legislative approval or rejection of eligible projects is not given each year within 45 days after receipt of the department's list of eligible projects, the department list shall be considered approved.

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

Popular name: Act 451

Popular name: NREPA

PART 51
WASTEWATER DISPOSAL

324.5101 “Land disposal wastewater management program” defined.

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

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

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Surface Water Quality Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

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

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

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

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.5103 Implementation of program; approval or disapproval.

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

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

Popular name: Act 451

Popular name: NREPA

PART 52
STRATEGIC WATER QUALITY INITIATIVES

324.5201 Definitions.

Sec. 5201. As used in this part:

(a) "Asset management program" means the program that identifies the desired level of service at the lowest life cycle cost for rehabilitating, repairing, or replacing the assets associated with a municipality's wastewater or storm water system.

(b) "Authority" means the Michigan municipal bond authority created in section 4 of the shared credit rating act, 1985 PA 227, MCL 141.1054.

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

(d) "Fund" means the strategic water quality initiatives fund created in section 5204.

(e) "Grant" means a grant from the grant program.

(f) "Grant program" means the strategic water quality initiatives grant program established under this part.

(g) "Loan" means a loan from the loan program.

(h) "Loan program" means the strategic water quality initiatives loan program established under section 5202.

(i) "Municipality" means that term as it is defined in section 5301.

(j) "On-site septic system" means a natural system or mechanical device used to store, treat, and dispose of sewage from 1 or more dwelling units that utilize a subsurface trench or bed that allows the effluent to be absorbed and treated by the surrounding soil, including a septic tank and tile field system.

(k) "State water pollution control revolving fund" means the state water pollution control revolving fund established under section 16a of the shared credit rating act, 1985 PA 227, MCL 141.1066a.

(*l*) "Wetland mitigation bank" means a site where wetlands are restored, created, or preserved for the purpose of doing both of the following:

(*i*) To provide compensatory mitigation in accordance with the provisions of part 303, in advance of authorized, unavoidable impacts to wetlands.

(*ii*) To provide storm water control, nonpoint source pollution control, or pollution treatment that improves the quality of the waters of the state.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002;—Am. 2005, Act 257, Imd. Eff. Dec. 1, 2005;—Am. 2012, Act 511, Eff. Jan. 2, 2013.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in

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section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.5202 Strategic water quality initiatives loan program; establishment; purpose; asset management program; content; criteria; interest rate.

Sec. 5202. (1) The authority in consultation with the department shall establish a strategic water quality initiatives loan program. This loan program shall provide low interest loans to municipalities to provide assistance for 1 or more of the following:

(a) Improvements to reduce or eliminate the amount of groundwater or storm water entering a sanitary sewer lead or a combined sewer lead.

(b) Upgrades or replacements of failing on-site septic systems that are adversely affecting public health or the environment, or both.

(c) Project costs of the municipality related to testing, demonstration, and construction activities as defined in section 5301(d) for innovative wastewater and storm water technologies approved by the department.

(d) Assistance for construction activities as defined in section 5301(d) designed to protect water quality, including improvements that are water or energy efficient, where feasible, when identified through an asset management program or a project identified in an approved storm water management plan.

(2) The department shall develop criteria specifying the content of an asset management program.

(3) In implementing the loan program, the department shall annually establish the interest rate that will be charged for loans.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002;—Am. 2012, Act 511, Eff. Jan. 2, 2013.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

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

Popular name: Act 451

Popular name: NREPA

324.5203 Loan application by municipality; process; agreement; disposition of money received as repayment.

Sec. 5203. (1) A municipality that wishes to apply for a loan shall submit a loan application to the department as follows:

(a) In compliance with the application requirements provided in part 53, for activities described in section 5202(1)(a) or (b).

(b) On a form approved by the department, for activities described in section 5202(1)(c) or (d).

(2) The department shall process the loan applications submitted under this part.

(3) Prior to releasing a loan, the authority in consultation with the department shall enter into a loan agreement with the loan recipient.

(4) All money that is received for the repayment of a loan shall be forwarded to the state treasurer for deposit into the fund.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002;—Am. 2012, Act 511, Eff. Jan. 2, 2013.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

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

Popular name: Act 451

Popular name: NREPA

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324.5204 Strategic water quality initiatives fund; creation; disposition of money or assets; investment; funds remaining at close of fiscal year; expenditures; fund as security.

Sec. 5204. (1) The strategic water quality initiatives fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. The authority shall act as fiscal agent for the fund in accordance with the shared credit rating act, 1985 PA 227, MCL 141.1051 to 141.1076.

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

(4) The authority in consultation with the department shall expend money from the fund, upon appropriation, only for the following:

(a) Loans under section 5202.

(b) Grants under sections 5204a, 5204d, and 5204e.

(c) Response activities to address nonpoint source water pollution under section 5204b.

(d) Grants and loans for brownfield sites under section 5204c.

(e) Grants and loans for wetland mitigation banks under section 5204f.

(f) The costs of the authority and the department in administering the fund.

(5) The fund may be pledged as security for bonds to be issued by the authority for the purpose of funding loans if authorized by the state administrative board.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002;—Am. 2005, Act 253, Imd. Eff. Dec. 1, 2005;—Am. 2010, Act 232, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 511, Eff. Jan. 2, 2013.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

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

Popular name: Act 451

Popular name: NREPA

324.5204a Strategic water quality initiatives grant program.

Sec. 5204a. (1) The authority, in conjunction with the department, shall establish a strategic water quality initiatives grant program that provides grants totaling not more than $80,000,000.00 to eligible municipalities. The grant program shall provide assistance to municipalities to complete the loan application requirements of section 5308 or to complete the loan application requirements for other sources of financing for sewage treatment works projects, storm water treatment projects, or nonpoint source projects.

(2) The grant program is subject to all of the following:

(a) The grant program shall provide grants to cover not more than 90% of the costs incurred by a municipality to complete an application for loan assistance from the state water pollution control revolving fund or the fund or to complete an application for loan assistance from another source of financing for a sewage treatment works project, a storm water treatment project, or a nonpoint source project.

(b) The 10% local match is not eligible for loan assistance from the state water pollution control revolving fund or the fund or other source of financing for the project.

(c) Grant funds shall not be used for general local government administrative activities or activities performed by municipal employees.

(d) A municipality shall not receive more than $1,000,000.00 in total grant assistance under this section.

(e) Grants under this section shall be available for projects seeking or intending to seek loan assistance after September 30, 2006.

(3) The department shall establish an application and review process for considering grant applications under this section. The application shall contain the information required by the department and the authority. Within 60 days after receipt of an application, the department shall publish notice of the application on the department's calendar. Within 60 days after receipt of an administratively complete grant application, the department shall, in writing, notify the applicant whether the application is approved or rejected. If the department approves a grant under this section, the department and the authority shall enter into a grant agreement with the recipient prior to transferring funds. The grant agreement shall contain terms established

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by the department and the authority and a requirement that the grant recipient repay the grant, within 90 days of being informed to do so, with interest at a rate not to exceed 8% per year, to the authority for deposit into the fund if any of the following occur:

(a) The applicant fails to submit an administratively complete loan application for assistance from the state water pollution control revolving fund or the fund or other source of financing for the project within 3 years of the grant award.

(b) The project has been identified as being in the fundable range or is approved for funding from another source and the applicant declines the loan assistance for 2 consecutive fiscal years unless the applicant proceeds with funding from another source.

(c) The applicant is unable to, or decides not to, proceed with constructing the project.

(4) For each year in which the department receives grant applications under this section, the department shall report by July 1 of each year to the standing committees of the senate and the house of representatives with primary jurisdiction over issues pertaining to natural resources and the environment and to the senate and house of representatives appropriations committees on the utilization of funds under this part that were received from the Great Lakes water quality bond fund created in section 19706. The report shall include, at a minimum, all of the following:

(a) The number of grant applications received under this section.

(b) The name of each municipality applying for a grant.

(c) The individual and annual cumulative amount of grant funds awarded, including an identification of whether each award was for the purpose of applying for assistance from the state water pollution control revolving fund or the fund.

(d) A summary of loan assistance, by year, tendered from the state water pollution control revolving fund and the fund.

(5) The senate and house appropriations committees shall annually review whether there is sufficient money in the fund to implement this section and section 5202.

History: Add. 2005, Act 254, Imd. Eff. Dec. 1, 2005;—Am. 2010, Act 231, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: NREPA

324.5204b Nonpoint source water pollution; expenditures; limitation; requirements; selection of projects; expenditures subject to generally accepted accounting principles; annual report; use of fund; "facility", "release", and "response activity" defined.

Sec. 5204b. (1) Subject to section 5204c, the department may expend, upon appropriation, not more than $140,000,000.00 of the money from the fund for response activities to address nonpoint source water pollution at facilities as follows:

(a) For the state fiscal year ending September 30, 2011, not more than $50,000,000.00 may be authorized for expenditure under this section.

(b) For the state fiscal year ending September 30, 2012, not more than $50,000,000.00 may be authorized for expenditure under this section.

(c) Beginning October 1, 2012, any money not previously authorized for expenditure under this section may be expended under this section only if the department documents that it has achieved the following performance objectives:

(*i*) Increasing the level of investment in sewage collection and treatment systems.

(*ii*) Providing incentives for actions that not only improve water quality but result in pollution prevention.

(*iii*) Optimizing the cost benefit ratio of alternative designs of sewage collection and treatment systems.

(*iv*) Demonstrating progress toward maximizing risk reduction and economic development objectives identified for projects funded under this section.

(2) The department shall expend money under this section in compliance with all of the following:

(a) The expenditure is used to improve the quality of the waters of the state.

(b) The expenditure is used only for facilities in which the department does not know the identity of the person or persons who are liable under part 201 for the release resulting in the water pollution or the person or persons who are liable do not have sufficient resources to fund the required response activities.

(c) The facilities include property that is located within the identified planning area boundaries of a publicly owned sanitary sewer system eligible for funding under the state water pollution control revolving fund established in section 16a of the shared credit rating act, 1985 PA 227, MCL 141.1066a.

(d) The expenditure is used for response activities necessary to address existing or imminent unacceptable risks arising from conditions that contribute to nonpoint source water pollution, including expenses for project

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management activities within the department.

(3) In using funds to address nonpoint source water pollution projects under this section, the department shall select projects that, to the extent practicable, provide maximum benefit to the state in protecting public health and the environment and contributing to economic development.

(4) Money expended to support project management within the department to manage response activities at the facility shall be expended pursuant to generally accepted accounting principles.

(5) The department shall annually submit a report to the standing committees of the senate and house of representatives with jurisdiction over issues primarily pertaining to natural resources and the environment and to the senate and house of representatives appropriations subcommittees on natural resources and the environment that describes the projects funded under this section and includes an evaluation of how the expenditures, to the extent practicable, provide maximum benefit to the state in protecting public health and the environment and contributing to economic development. For each project funded under this section, the report shall include all of the following:

(a) How the project met the criteria described in this section.

(b) The extent to which the project improved water quality or prevented a risk to water quality as measured by the number of individuals who benefit from the project.

(c) The extent to which the project preserved infrastructure investments that protect public health or prevented risks to water quality as measured by the risk posed or the public health protected.

(d) The extent to which the project enhanced economic development as measured by such factors including, but not limited to, all of the following:

(*i*) A net increase to the value of the properties in the vicinity of the project.

(*ii*) The creation of jobs.

(*iii*) The extent to which the project contributed to leveraging private investment in the vicinity of the project.

(e) If the project included funding for project management within the department, a breakdown of the amount of money used to support the project management as justified using generally accepted accounting principles.

(6) The legislature finds that use of the fund for response activities to address nonpoint source water pollution at facilities is appropriate and necessary at this time. It is the intent of this legislature that money from the fund shall not be utilized for response activities to address nonpoint source water pollution at facilities when the $150,000,000.00 has been expended under this section and section 5204c.

(7) As used in this section, "facility", "release", and "response activity" mean those terms as they are defined in part 201.

History: Add. 2010, Act 232, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: NREPA

324.5204c Nonpoint source water pollution; brownfield redevelopment grants and loans to municipalities and brownfield redevelopment authorities; development of materials; applications.

Sec. 5204c. (1) The department may expend $10,000,000.00 of money from the fund to provide brownfield redevelopment grants and loans to municipalities and brownfield redevelopment authorities created under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672, for response activities to address nonpoint source water pollution at facilities. Of the money expended under this section, $5,000,000.00 shall be used for grants and $5,000,000.00 shall be used for loans. However, on September 30, 2014, if any money described in this section has not been appropriated for the purposes of this section, that money may be used for the purposes of section 5204b.

(2) The department shall develop grant and loan application materials to implement this section and shall accept applications at any time throughout the year.

History: Add. 2010, Act 232, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: NREPA

324.5204d Grant program within strategic water quality initiatives fund; establishment; purpose; recommendations.

Sec. 5204d. The state may establish a grant program within the strategic water quality initiatives fund for the purpose of funding specific wastewater treatment facility infrastructure improvement projects designed to

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prevent chronic discharges and projected to have significant regional benefits to Great Lakes water quality and recreational opportunities. In establishing such a program, the state may consider the recommendations of the advisory committee created in section 5317.

History: Add. 2010, Act 232, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: NREPA

324.5204e Grant program; purpose; conditions; application and review process; contents; approval; agreement; terms; report.

Sec. 5204e. (1) In addition to other requirements of this part, the grant program shall provide grants to municipalities for sewage collection and treatment systems or storm water or nonpoint source pollution control as provided for in this section.

(2) The grant program is subject to all of the following:

(a) The grant program shall provide grants in accordance with the following:

(*i*) Subject to subparagraph (*iii*), for grants of up to $1,000,000.00, not more than 90% of the costs incurred by the municipality.

(*ii*) Subject to subparagraph (*iii*), for grants of more than $1,000,000.00 and less than $2,000,000.00, not more than 90% of the costs incurred by the municipality up to $1,000,000.00 and not more than 75% of the costs above $1,000,000.00 incurred by the municipality.

(*iii*) If any of the following conditions are met, a grant may be issued to cover 100% of the costs incurred by the municipality:

(A) The municipality is a disadvantaged community as defined in part 53.

(B) The municipality is in receivership.

(C) The municipality is operating under an emergency manager or an emergency financial manager appointed under state law.

(D) The municipality is operating under a consent agreement as provided under the local financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575.

(b) A grant may be used for 1 or more of the following purposes:

(*i*) Development of an asset management program for a sewage collection and treatment system or a storm water system. For sewage collection and treatment systems, the program shall include the development of a funding structure and implementation schedule that provides sufficient resources to implement the program. The municipality shall coordinate, as feasible, with other infrastructure activities in the same geographic area. In addition, a disadvantaged community may expend not more than $500,000.00 in grant funds to implement projects identified in the asset management program.

(*ii*) Development of management plans for the treatment of storm water.

(*iii*) Planning and design of a sewage treatment works project or stormwater treatment project as defined in section 5301(n) or (o) or planning and design of construction activities designed to reduce nonpoint source pollution.

(*iv*) Project costs of a municipality related to the testing and demonstration of innovative wastewater and storm water technologies approved by the department.

(*v*) For projects to address a substantial public health risk from treatment system failure, up to 50% of the project costs related to the planning, design, and construction of a sewage collection and treatment system. To be eligible for a grant under this subparagraph, a municipality shall apply on or after June 1, 2016, meet criteria developed by the department, and provide a demonstration of financial need, including an economic feasibility study with which the department of treasury concurs. Construction funding under this subparagraph shall not exceed $10,000,000.00 and shall be allocated from wetland mitigation bank funding authorized in section 5204f(1).

(c) The local match is not eligible for loan assistance from the state water pollution control revolving fund or the fund.

(d) Grant funds shall not be used for general local government administrative activities or activities performed by municipal employees that are unrelated to the project.

(e) A municipality shall not receive more than $2,000,000.00 in total grant assistance under this section.

(3) The department shall establish an application and review process for considering grant applications under this section. The application shall contain the information required by the department and the authority. Within 60 days after receipt of an application, the department shall publish notice of the application on the department's calendar. Within 120 days after receipt of an administratively complete grant application, the department shall, in writing, notify the applicant whether the application is approved or rejected. If the department approves a grant under this section, the department and the authority shall enter into a grant

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agreement with the recipient prior to transferring funds. The grant agreement shall contain terms established by the department and the authority, including both of the following:

(a) A requirement that a grant recipient proceed with a project for which grant funding is provided within 3 years after the department approves the grant. For asset management programs related to sewage collection and treatment systems, this includes significant progress, as determined by the department, toward achieving the funding structure necessary to implement the program.

(b) A requirement that the grant recipient repay the grant, within 90 days of being informed to do so, with interest at a rate not to exceed 8% per year, to the authority for deposit into the fund if the applicant is unable to, or decides not to, proceed with a construction project or begin implementation of an asset management program for which grant funding is provided.

(4) For each year in which the department receives grant applications under this section, the department shall report by October 1 of that year to the standing committees of the senate and the house of representatives with primary jurisdiction over issues pertaining to natural resources and the environment and to the senate and house of representatives appropriations committees on the utilization of funds under this part that were received from the Great Lakes water quality bond fund created in section 19706. The report shall include, at a minimum, all of the following:

(a) The number of grant applications received under this section.

(b) The name of each municipality applying for a grant.

(c) The type of project being funded for each grant awarded.

(d) The number of users potentially affected by each grant awarded.

(e) The amount of the local match for each grant awarded.

(f) The individual and annual cumulative amount of grant funds awarded, including an identification of whether each award was for the purpose of applying for assistance from the state water pollution control revolving fund or the fund.

History: Add. 2012, Act 511, Eff. Jan. 2, 2013;—Am. 2016, Act 164, Imd. Eff. June 9, 2016.

Popular name: Act 451

Popular name: NREPA

324.5204f Wetland mitigation bank funding program.

Sec. 5204f. (1) The department, in conjunction with the authority, shall establish a wetland mitigation bank funding program that provides grants and loans totaling not more than $10,000,000.00 to eligible municipalities. Of the money expended under this subsection, up to $500,000.00 may be used for grants. Funding may be used for the purpose of this subsection as long as funds remain available.

(2) Grants awarded under the wetland mitigation bank funding program shall provide assistance to municipalities to complete loan application requirements for funding from the wetland mitigation bank funding program or to complete loan application requirements for other sources of financing. Grants for wetland mitigation banks are subject to the following:

(a) Grants shall not cover more than 90% of the costs incurred by a municipality to complete an application for loan assistance.

(b) Grant funding may be used for the following purposes:

(*i*) Developing an approvable wetland mitigation banking proposal.

(*ii*) Notifying affected local units of government and adjacent property owners of the proposed wetland mitigation bank, and working to resolve objections to the project.

(*iii*) Planning and designing the wetland mitigation bank.

(*iv*) Completing the wetland mitigation bank funding program loan application or loan application requirements for other sources of financing.

(c) The 10% local match is not eligible for loan assistance from the wetland mitigation funding bank program.

(d) Grant funds shall not be used for general local government administrative activities or activities performed by municipal employees that are unrelated to development of the wetland mitigation bank loan application.

(e) Applications for grants from the wetland mitigation funding bank program shall be made on a form provided by the department and shall contain the information required by the department and the authority. Grant applications may be made at any time.

(f) The department shall establish a review process for considering grant applications under this subsection. The department shall notify the applicant in writing whether the application is approved or rejected. If the department approves a grant under this section, the department and the authority shall enter

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into a grant agreement with the recipient prior to transferring funds.

(g) The grant agreement shall contain terms established by the department and the authority and a requirement that the grant recipient repay the grant, within 90 days of being informed to do so, with interest at a rate not to exceed 8% per year, to the authority for deposit into the fund if any of the following occur:

(*i*) The applicant fails to submit an administratively complete loan application for assistance from the wetland mitigation bank funding program or other source of financing for the project within 1 year of the date on which the grant expires.

(*ii*) The applicant declines the loan assistance for 2 consecutive years unless the applicant proceeds with funding from another source.

(*iii*) The applicant is unable to enter into a signed wetland mitigation banking agreement with the department within 2 years of the date on which the grant expires.

(*iv*) The applicant is unable to or decides not to proceed with constructing the project.

(3) Loans under the wetland mitigation bank funding program shall provide assistance to municipalities to establish a wetland mitigation bank. Loans shall be subject to the following:

(a) Loans under the wetland mitigation bank funding program shall be for 1 or more of the following:

(*i*) Complete and execute the wetland mitigation banking agreement with the department.

(*ii*) Complete engineering and design for the wetland mitigation bank.

(*iii*) Purchase land for the wetland mitigation bank.

(*iv*) Construct the wetland mitigation bank.

(*v*) Conduct monitoring and maintenance necessary to ensure that the performance standards are or will be met.

(*vi*) In addition, the department may approve the use of loan funds for other activities needed to establish a wetland mitigation bank upon a demonstrated need by the municipality.

(b) Applications for loans from the wetland mitigation bank funding program shall be made on a form provided by the department and shall contain the information required by the department and the authority. Loan applications may be made at any time.

(4) The department shall establish a review process for considering loan applications under this subsection. The department shall notify the applicant in writing whether the loan is approved or rejected. Prior to releasing a loan, the authority in consultation with the department shall enter into a loan agreement with the loan recipient.

(5) For each year in which the department receives grant or loan applications under this section, the department shall report by October 1 to the standing committees of the senate and the house of representatives with primary jurisdiction over issues pertaining to natural resources and the environment and to the senate and house appropriations committees on the utilization of funds under this part that were received from the Great Lakes water quality bond fund created in section 19706. The report shall include, at a minimum, all of the following:

(a) The number of grant and loan applications received under this section.

(b) The name of each municipality applying for a grant or loan, or both.

(c) The amount of local match for each grant awarded.

(d) The individual and annual cumulative amount of grant and loan funds awarded, including an identification of the purpose of each grant and loan awarded.

History: Add. 2012, Act 559, Imd. Eff. Jan. 2, 2013.

324.5205 Rules.

Sec. 5205. The department may promulgate rules to implement this part.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

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

Popular name: Act 451

Popular name: NREPA

324.5206 Legislative findings.

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Sec. 5206. The legislature finds and declares that the environmental, natural resources, and water quality protection programs implemented under this part are a public purpose and of paramount public concern in the interest of the health, safety, and general welfare of the citizens of this state.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

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

Popular name: Act 451

Popular name: NREPA

PART 53
CLEAN WATER ASSISTANCE

324.5301 Definitions.

Sec. 5301. As used in this part:

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

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

(*ii*) Project refinancing assistance.

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

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

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

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

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

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

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

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

(*i*) Project planning services.

(*ii*) Engineering services.

(*iii*) Legal services.

(*iv*) Financial services.

(*v*) Design of plans and specifications.

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

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

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

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

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

(e) "Disadvantaged community" means a municipality in which all of the following conditions are met:

(*i*) Users within the area served by a proposed sewage treatment works project or stormwater treatment project are directly assessed for the costs of construction.

(*ii*) The median household income of the area served by a proposed sewage treatment works project or

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stormwater treatment project does not exceed 120% of the statewide median annual household income for Michigan.

(*iii*) The municipality demonstrates at least 1 of the following:

(A) More than 50% of the area served by a proposed sewage treatment works project or stormwater treatment project is identified as a poverty area by the United States bureau of census.

(B) The median annual household income of the area served by a proposed sewage treatment works project or stormwater treatment project is less than the most recently published federal poverty guidelines for a family of 4 in the 48 contiguous United States. In determining the median annual household income of the area served by the proposed sewage treatment works project or stormwater treatment project under this sub-subparagraph, the municipality shall utilize the most recently published statistics from the United States bureau of the census, updated to reflect current dollars, for the community which most closely approximates the area being served by the project.

(C) The median annual household income of the area served by a proposed sewage treatment works project or stormwater treatment project is less than the most recently published statewide median annual household income for this state, and annual user costs for sewage treatment or stormwater treatment exceed 1% of the median annual household income of the area served by the proposed sewage treatment works project or stormwater treatment project.

(D) The median annual household income of the area served by a proposed sewage treatment works project or stormwater treatment project is not greater than 120% of the statewide median annual household income for this state, and annual user costs for sewage treatment or stormwater treatment exceed 3% of the median annual household income of the area served by the proposed project.

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

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

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

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

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

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

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

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

(n) "Sewage treatment works project" means construction activities on any device or system for the treatment, storage, collection, conveyance, recycling, or reclamation of the sewage of a municipality, including combined sewer overflow correction and major rehabilitation of sewers.

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

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 397, Eff. Nov. 5, 2002;—Am. 2005, Act 255, Imd. Eff. Dec. 1, 2005;—Am. 2012, Act 560, Imd. Eff. Jan. 2, 2013.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond

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authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

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

Popular name: Act 451

Popular name: NREPA

324.5302 Construction of part; broad interpretation of powers; prohibited grants or loans; liability for costs; legislative intent.

Sec. 5302. (1) This part shall be construed liberally to effectuate the legislative intent. All powers granted under this part shall be broadly interpreted to effectuate the intent and purposes of this part and shall not be interpreted as a limitation of powers.

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

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

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

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

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.5303 Cooperative regional or intermunicipal projects; project plan for tier I or tier II project; documentation; notice; public comment; development of priority list; submission of priority list to legislature; effective date of priority list; other actions not limited; "on-site septic system" defined.

Sec. 5303. (1) Municipalities shall consider and utilize, where possible, cooperative regional or intermunicipal projects in satisfying sewerage needs in the development of project plans.

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

(3) The project plan for a tier I project shall include documentation that demonstrates that the project is needed to assure maintenance of, or to progress toward, compliance with the federal water pollution control act or part 31, and to meet the minimum requirements of the national environmental policy act of 1969, Public Law 91-190, 42 USC 4321, 4331 to 4335, and 4341 to 4347. The documentation shall demonstrate all of the following:

(a) The need for the project.

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

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

(d) Other information as required by the department.

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

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

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

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

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

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

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

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

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

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

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

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

(*v*) If the project is within a disadvantaged community, a maximum of 50 points shall be awarded to the project in the manner that points are awarded in rules promulgated under this part.

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

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

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

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

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

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

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

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2001, Act 221, Imd. Eff. Jan. 2, 2002;—Am. 2002, Act 398, Eff. Nov. 5, 2002;—Am. 2012, Act 560, Imd. Eff. Jan. 2, 2013.

Compiler's note: Enacting section 2 of Act 398 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

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

Popular name: Act 451

Popular name: NREPA

324.5304 Assistance; requirements.

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

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the following:

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 397, Eff. Nov. 5, 2002.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

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

Popular name: Act 451

Popular name: NREPA

324.5305 Descriptions and timetables for actions.

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

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

Popular name: Act 451

Popular name: NREPA

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Upon notice from the United States environmental protection agency that the intended use plan is approved, the department shall notify each municipality of its inclusion on the intended use plan and shall further provide copies of the sewage treatment works projects and stormwater treatment projects priority list,

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the nonpoint source project priority list, and the intended use plan to all persons requesting such information. Following notification, the department shall establish, with the concurrence of the municipality, a schedule for project plan approval, submittal of a complete application for assistance, and approval of plans and specifications.

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

Popular name: Act 451

Popular name: NREPA

324.5307 Project plans; review; approval or disapproval; extension of review period; notice of deficiencies; review of subsequent submittals.

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

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

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

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

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

Popular name: Act 451

Popular name: NREPA

324.5308 Application for assistance; requirements; revenue source; acceptance; notice of additional information required; approval or disapproval of application.

Sec. 5308. (1) To apply for assistance from the fund, a municipality shall submit the following, if applicable as determined by the department:

(a) If assistance is in the form of a loan, financial documentation that a dedicated source of revenue is established, consistent with municipal bond obligations existing at the time assistance is requested, and pledged to both of the following purposes:

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

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

(b) A project plan approved under section 5307.

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

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

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

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

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

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

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

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

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

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

(m) An agreement that the municipality will provide written authorizations to the department for the purpose of examining the physical plant and for examining, reviewing, or auditing the operational or financial

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records of the project, and that the municipality will require similar authorizations from all contractors, consultants, or agents with which it negotiates an agreement.

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

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

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

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

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

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

(a) Ad valorem taxes.

(b) Special assessments.

(c) User-based revenue collections.

(d) General funds of the municipality.

(e) Benefit charges.

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

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

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

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

Popular name: Act 451

Popular name: NREPA

324.5309 Segmenting sewage treatment work project.

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

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

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

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

Popular name: Act 451

Popular name: NREPA

324.5310 Project subject to bypass; extension of schedule; effect of bypass.

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

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the date of notification of bypass.

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

Popular name: Act 451

Popular name: NREPA

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

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

(a) The term of the assistance.

(b) The maximum principal amount of the assistance.

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

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

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

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

(5) The method of establishing interest rates may provide for a different level of subsidy for tier I projects than for tier II projects.

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

Popular name: Act 451

Popular name: NREPA

324.5312 Termination of assistance; determination; causes; notice; repayment of outstanding loan balance; requirements under state or federal law.

Sec. 5312. (1) The department may make a determination that assistance should be terminated and may issue an order recommending that the authority take appropriate action to terminate assistance.

(2) Cause for making a determination under subsection (1) includes, but is not limited to, 1 or more of the following:

(a) Substantial failure to comply with the terms and conditions of the agreement providing assistance.

(b) A legal finding or determination that the assistance was obtained by fraud.

(c) Practices in the administration of the project that are illegal or that may impair the successful completion or organization of the project.

(d) Misappropriation of assistance for uses other than those set forth in the agreement providing assistance.

(3) The department shall give written notice to the municipality by certified letter of the intent to issue an order recommending that assistance be terminated. This notification must be issued not less than 30 days before the department forwards the order recommending that the authority take appropriate action to terminate assistance.

(4) The termination of assistance by the authority shall not excuse or otherwise affect the municipality's requirement for repayment of the outstanding loan balance to the fund.

(5) Termination of assistance under this section does not relieve the municipality of any requirements that may exist under state or federal law to construct the project.

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

Popular name: Act 451

Popular name: NREPA

324.5313 Petition; orders; repayment of outstanding loan balance; requirements under state or federal law.

Sec. 5313. (1) A municipality may petition the department to make a determination and issue an order under section 5312(1) for cause.

(2) The department may issue an order to terminate the project for cause that is effective on the date the project ceases activities.

(3) Subject to the termination of assistance by the authority and payment of any appropriate termination

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settlement costs, the department shall issue an order to the authority recommending appropriate action.

(4) The termination of assistance by the authority shall not excuse or otherwise affect the municipality's requirement for repayment of the outstanding loan balance to the fund.

(5) Termination of the loan under this section does not relieve the municipality of any requirements that may exist under state or federal law to construct the project.

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

Popular name: Act 451

Popular name: NREPA

324.5314 Costs of administering and implementing part; payment.

Sec. 5314. The costs of administering and implementing this part by the department, the designated agents of the department, and the authority may be paid from funds annually appropriated by the legislature from 1 or more of the following sources:

(a) An amount taken from the federal capitalization grant, subject to the limitations prescribed in the federal water pollution control act.

(b) Loan fees, not to exceed the ratio that the annual appropriation for administration of this part bears to the total value of loans awarded for the fiscal year in which the appropriation was made, as estimated in the intended use plan.

(c) Interest or earnings realized on loan repayments to the fund, unless the earnings are pledged to secure or repay any indebtedness of the authority.

(d) Proceeds of bonds or notes issued pursuant to the fund and sold by the authority.

(e) Any other money appropriated by the legislature.

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

Popular name: Act 451

Popular name: NREPA

324.5315 Repealed. 2012, Act 560, Imd. Eff. Jan. 2, 2013.

Compiler's note: The repealed section pertained to duration of current priority list.

Popular name: Act 451

Popular name: NREPA

324.5316 Powers of department.

Sec. 5316. The department has the powers necessary or convenient to carry out and effectuate the purpose, objectives, and provisions of this part, and the powers delegated by other laws or executive orders, including, but not limited to, the power to:

(a) Make, execute, and deliver contracts, conveyances, and other instruments necessary or convenient to the exercise of his or her powers.

(b) Solicit and accept gifts, grants, loans, allocations, appropriations, and other aid, including capitalization grant awards, from any person or the federal, state, or a local government or any agency of the federal, state, or local government, to enter into agreements with any person or the federal, state, or a local government, or to participate in any other way in any federal, state, or local government program consistent with this part and the purposes of this part.

(c) Negotiate and enter into agreements and amendments to agreements with the federal government to implement establishment and operation of the fund, including capitalization grant agreements and schedules of payments.

(d) Engage personnel as is necessary and engage the services of private consultants, managers, counsel, auditors, engineers, and scientists for rendering professional management and technical assistance and advice.

(e) Charge, impose, and collect fees and charges in connection with any transaction authorized under this part and provide for reasonable penalties for delinquent payment of fees or charges.

(f) Review and approve all necessary documents in a municipality's application for assistance and issue an order authorizing assistance to the authority.

(g) Promulgate rules necessary to carry out the purposes of this part and to exercise the powers expressly granted in this part.

(h) Administer, manage, and do all other things necessary or convenient to achieve the objectives and purposes of the fund, the authority, this part, or other state and federal laws that relate to the purposes and responsibilities of the fund.

(i) Make application requesting a capitalization grant and prepare, submit, and certify any required or appropriate information with that application.

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(j) Establish priority lists and fundable ranges for projects and the criteria and methods used to determine the distribution of the funds available to the fund among the various types of assistance to be offered and to select projects to be funded.

(k) Prepare and submit an annual report required by the federal water pollution control act.

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

Popular name: Act 451

Popular name: NREPA

324.5317 State water pollution control revolving fund advisory committee.

Sec. 5317. (1) The state water pollution control revolving fund advisory committee is created within the department of natural resources and environment.

(2) The committee shall consist of a representative of the department of natural resources and environment and additional members appointed by the director of the department of natural resources and environment upon recommendation from at least the following organizations:

(a) The American council of engineering companies.

(b) The American waterworks association.

(c) The Michigan chamber of commerce.

(d) The Michigan association of counties.

(e) The Michigan townships association.

(f) The Michigan municipal league with regard to appointing members from the following:

(*i*) A rural municipality with a population of 10,000 or less that operates a sewage treatment works system.

(*ii*) A suburban municipality that operates a sewage treatment works system.

(*iii*) A city that operates a sewage treatment works system.

(g) A statewide association representing drain commissioners.

(h) The Michigan infrastructure and transportation association.

(i) The Michigan water and environment association.

(j) A statewide organization of regional planning authorities.

(k) A statewide environmental or conservation organization.

(3) The members first appointed to the committee shall be appointed within 60 days after the effective date of the amendatory act that added this section.

(4) If a vacancy occurs on the committee, the director shall make an appointment for the unexpired term in the same manner as the original appointment.

(5) The director may remove a member of the committee for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

(6) The first meeting of the committee shall be called by the director of the department of natural resources and environment.

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

(8) The business that the committee may perform shall be conducted at a public meeting of the committee held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(9) A writing prepared, owned, used, in the possession of, or retained by the committee in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(10) Members of the committee shall serve without compensation.

(11) Staff from the department of natural resources and environment shall assist with the administrative tasks of the committee, including meeting notices, minutes, and compilation of resource materials and reports.

(12) The committee shall evaluate this part and make recommendations on how this part could be amended to achieve the following outcomes:

(a) Increasing the level of investment in sewage collection and treatment systems.

(b) Providing incentives for actions that not only improve water quality but result in pollution prevention.

(c) Optimizing the cost benefit ratio of alternative designs of sewage collection and treatment systems.

(13) The committee shall review and make recommendations on revisions to this part related to at least all of the following:

(a) Revising procedures to accommodate concurrent design and build type procurement and other nontraditional contracting procedures.

(b) Allowing project planning and preconstruction as costs eligible for assistance from the fund.

(c) Reducing and streamlining the cost-effectiveness review requirements to be more consistent with local planning needs.

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(d) Updating the scoring system to take into account infrastructure asset management.

(e) Simplifying application procedures.

(f) Reviewing options to provide grants to municipalities for timely and appropriate project planning, including disincentives for failure to demonstrate progress.

(g) Establishing protocols for a premeeting process for the department of natural resources and environment to provide informal feedback to review the application and determine the likelihood of receiving funding.

(h) Recommending a new model for establishing interest rates on a sliding scale based on the percentage of income paid in utility fees.

(i) Reviewing options to allow municipalities to be able to roll project plan expenses into the loans.

(j) Alternative financing mechanisms for funding sewage treatment works projects, storm water projects, and nonpoint source projects.

(14) The committee shall review and make recommendations regarding the need for and design of a grant program for the purpose of funding specific wastewater treatment facility infrastructure improvements projects designed to prevent chronic discharges and projected to have significant regional benefits to Great Lakes water quality and recreational opportunities.

(15) Not later than August 1, 2011, the committee shall submit a report to the department of natural resources and environment and to the standing committees of the senate and house of representatives with jurisdiction over issues primarily pertaining to natural resources and the environment, containing the committee's conclusions and recommendations.

(16) Effective 6 months after the committee submits its report under subsection (15), the committee is abolished.

(17) As used in this section, "committee" means the state water pollution control revolving fund advisory committee created in subsection (1).

History: Add. 2010, Act 231, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: NREPA

PART 54

(Safe Drinking Water Assistance)

324.5401 Definitions; A to C.

Sec. 5401. As used in this part:

(a) “Act 399” means the safe drinking water act, 1976 PA 399, MCL 325.101 to 325.1023.

(b) “Annual user costs” means an annual charge levied by a water supplier on users of the waterworks system to pay for each user's share of the cost for operation, maintenance, and replacement of the waterworks system. These costs may also include a charge to pay for the debt obligation.

(c) “Assistance” means 1 or more of the following activities to the extent authorized by the federal safe drinking water act:

(*i*) Provision of loans for the planning, design, and construction or alteration of waterworks systems.

(*ii*) Project refinancing assistance.

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

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

(*v*) Provision of loan guarantees for sub-state revolving funds established by water suppliers that are municipalities.

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

(*vii*) Provision for reasonable costs of administering and conducting activities under this part.

(*viii*) Provision of technical assistance under this part.

(*ix*) Provision of loan forgiveness for certain planning costs incurred by disadvantaged communities.

(d) “Authority” means the Michigan municipal bond authority created in the shared credit rating act, 1985 PA 227, MCL 141.1051 to 141.1077.

(e) “Capitalization grant” means the federal grant made to this state by the United States environmental protection agency, as provided in the federal safe drinking water act.

(f) “Community water supply” means a public water supply that provides year-round service to not less than 15 living units or which regularly provides year-round service to not less than 25 residents.

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(g) “Construction activities” means any actions undertaken in the planning, designing, or building of a waterworks system. Construction activities include, but are not limited to, all of the following:

(*i*) Engineering services.

(*ii*) Legal services.

(*iii*) Financial services.

(*iv*) Preparation of plans and specifications.

(*v*) Acquisition of land or structural components, or both, if the acquisition is integral to a project authorized by this part and the purchase is from a willing seller at fair market value.

(*vi*) Building, erection, alteration, remodeling, or extension of waterworks systems, providing the extension is not primarily for the anticipation of future population growth.

(*vii*) Reasonable expenses of supervision of the project activities described in subparagraphs (*i*) to (*vi*).

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997.

Popular name: Act 451

Popular name: NREPA

324.5402 Definitions; D to N.

Sec. 5402. As used in this part:

(a) "Department" means the department of environmental quality or its authorized agent or representative.

(b) "Director" means the director of the department of environmental quality or his or her designated representative.

(c) "Disadvantaged community" means a municipality in which all of the following conditions are met:

(*i*) Users within the area served by a proposed public water supply project are directly assessed for the costs of construction.

(*ii*) The median annual household income of the area served by a proposed public water supply project does not exceed 120% of the statewide median annual household income for Michigan.

(*iii*) The municipality demonstrates at least 1 of the following:

(A) More than 50% of the area served by a proposed public water supply project is identified as a poverty area by the United States bureau of the census.

(B) The median annual household income of the area served by a proposed public water supply project is less than the most recently published federal poverty guidelines for a family of 4 in the 48 contiguous United States. In determining the median annual household income of the area served by the proposed public water supply project under this subparagraph, the municipality shall utilize the most recently published statistics from the United States Bureau of the Census, updated to reflect current dollars, for the community which most closely approximates the area being served. If these figures are not available for the area served by the proposed public water supply project, the municipality may have a survey conducted to document the median annual household income of the area served by the project.

(C) The median annual household income of the area served by a proposed public water supply project is less than the most recently published statewide median annual household income for this state, and annual user costs for water supply exceed 1% of the median annual household income of the area served by the proposed public water supply project.

(D) The median annual household income of the area served by a proposed public water supply project is not greater than 120% of the statewide median annual household income for this state, and annual user costs for water supply exceed 3% of the median annual household income of the area served by the proposed project.

(d) "Federal safe drinking water act" means the safe drinking water act, 42 USC 300f to 300j-26, and the rules promulgated under that act.

(e) "Fund" means the safe drinking water revolving fund established under section 16b of the shared credit rating act, 1985 PA 227, MCL 141.1066b.

(f) "Fundable range" means those projects, taken in descending order on the priority list, for which the department estimates sufficient funds exist to provide assistance during each annual funding cycle.

(g) "Municipality" means a city, village, county, township, authority, public school district, or other public body with taxing authority, including an intermunicipal agency of 2 or more municipalities, authorized or created under state law.

(h) "Noncommunity water supply" means a public water supply that is not a community water supply, but that has not less than 15 service connections or that serves not less than 25 individuals on an average daily basis for not less than 60 days per year.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. 2012, Act 561, Imd. Eff. Jan. 2, 2013.

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Popular name: Act 451

Popular name: NREPA

324.5403 Definitions; P to W.

Sec. 5403. As used in this part:

(a) "Priority list" means the annual ranked listing of projects developed by the department in section 5406.

(b) "Project" means a project related to the planning, design, and construction or alteration of a waterworks system.

(c) "Project refinancing assistance" means buying or refinancing the debt obligations of water suppliers if construction activities commenced, and the debt obligation was incurred, after the effective date of this part.

(d) "Public water supply" means a waterworks system that provides water for drinking or household purposes to persons other than the supplier of the water, except for those waterworks systems that supply water to only 1 house, apartment, or other domicile occupied or intended to be occupied on a day-to-day basis by an individual, family group, or equivalent.

(e) "State drinking water standards" means rules promulgated under Act 399 that establish water quality standards necessary to protect public health or that establish treatment techniques to meet these water quality standards.

(f) "Water supplier" or "supplier" means a municipality or its designated representative accepted by the director, a legal business entity, or any other person who owns a public water supply. However, water supplier does not include a water hauler.

(g) "Waterworks system" or "system" means a system of pipes and structures through which water is obtained or distributed and includes any of the following that are actually used or intended to be used for the purpose of furnishing water for drinking or household purposes:

(*i*) Wells and well structures.

(*ii*) Intakes and cribs.

(*iii*) Pumping stations.

(*iv*) Treatment plants.

(*v*) Storage tanks.

(*vi*) Pipelines and appurtenances.

(*vii*) A combination of any of the items specified in this subdivision.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997.

Popular name: Act 451

Popular name: NREPA

324.5404 Water suppliers; qualifications for assistance.

Sec. 5404. (1) Water suppliers owning the following types of public water supplies qualify to receive assistance under this part:

(a) A community water supply.

(b) A noncommunity water supply that operates as a nonprofit entity.

(2) Water suppliers identified in subsection (1) that serve 10,000 people or less may qualify for assistance from funds prescribed in section 1452(a)(2) of part 6 of the federal safe drinking water act, 42 U.S.C. 300j-12.

(3) Project planning costs are eligible for funding under this part and will be reimbursed by the department as follows:

(a) For a municipality serving greater than 10,000 people, incurred planning costs related to the proposed project may be reimbursed as part of the construction loan approved by the Michigan municipal bond authority. These costs shall be repaid as part of the outstanding construction loan proceeds according to a schedule established by the authority.

(b) For a municipality serving less than 10,000 people, incurred planning costs related to the proposed project will be directly reimbursed by the department upon completion and submittal of an approvable project plan by the municipality to the department. These costs shall be repaid as part of the outstanding planning loan proceeds according to a schedule established by the authority.

(c) For disadvantaged communities, incurred planning costs related to the proposed project shall be directly reimbursed to the extent funds are available by the department upon completion and submittal of an approvable project plan by the municipality to the department. Technical assistance funds identified in section 1452(g)(2)(D) or section 1452(d)(1) of part E of the federal safe drinking water act, 42 U.S.C. 300j-12, shall be used to the extent available, to forgive repayment of the planning loan.

(4) Only water suppliers that have no outstanding prior year fees as prescribed in Act 399 may receive assistance under this part.

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(5) A federal, state, or other water supplier that is not regulated by the department shall not receive assistance under this part.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997.

Popular name: Act 451

Popular name: NREPA

324.5405 Water suppliers; application for assistance; project plan.

Sec. 5405. (1) A water supplier who is interested in applying for assistance under this part shall prepare and submit to the department a project plan as provided in this section. The department shall use project plans submitted under this section to develop a priority list for assistance as provided under this part.

(2) During the development of a project plan, a water supplier that is a municipality shall consider and utilize, where practicable, cooperative regional or intermunicipal projects, and a water supplier that is not a municipality shall consider and utilize, where practicable, connection to, or ownership by, a water supplier that is a municipality.

(3) The project plan for a project shall include documentation that demonstrates that the project is needed to assure maintenance of, or progress toward, compliance with the federal safe drinking water act. A complete project plan shall include all of the following as background:

(a) Identification of planning area boundaries and characteristics.

(b) A description of the existing waterworks systems.

(c) A description of the existing waterworks problems and needs, including the severity and extent of water supply problems or public health problems.

(d) An examination of projected needs for the next 20 years.

(e) Population projections and the source and basis for the population projections.

(4) A project plan shall include an analysis of alternatives, which shall consist of a systematic identification, screening, study, evaluation, and cost-effectiveness comparison of feasible technologies, processes, and techniques. The alternatives shall be capable of meeting the applicable state drinking water standards over the design life of the facility, while recognizing environmental and other nonmonetary considerations. The analysis shall include, but not be limited to, all of the following:

(a) A planning period for the cost-effectiveness analysis of 20 years or other such planning period as is justified by the unique characteristics of the project.

(b) Monetary costs that consider the present worth or equivalent annual value of all capital costs and operation and maintenance costs.

(c) Provisions for the ultimate disposal of residuals and sludge resulting from drinking water treatment processes.

(d) A synopsis of the environmental setting of the project and an analysis of the potential environmental and public health impacts of the various alternatives, as well as the identification of any significant environmental or public health benefits precluded by rejection of an alternative.

(e) Consideration of opportunities to make more efficient use of energy and resources.

(f) A description of the relationship between the service capacity of each waterworks systems alternative and the estimated future needs using population projections under subsection (3)(e).

(5) A project plan shall include a description of the selected alternative, including all of the following:

(a) Relevant design parameters.

(b) Estimated capital construction costs, operation and maintenance costs, and a description of the manner in which project costs will be financed.

(c) A demonstration of the water supplier's ability to repay the incurred debt, including an analysis of the impacts of the annual user costs for water supply on its users.

(d) A demonstration that the selected alternative is implementable considering the legal, institutional, technical, financial, and managerial resources of the water supplier.

(e) Assurance that there is sufficient waterworks system service capacity for the service area based on projected needs identified in subdivision (d) while avoiding the use of funds available under this part to finance the expansion of any public water system if a primary purpose of the expansion is to accommodate future development.

(f) Documentation of the project's consistency with the approved general plan prepared pursuant to section 4 of Act 399, MCL 325.1004.

(g) An analysis of the environmental and public health impacts of the selected alternative.

(h) Consideration of structural and nonstructural measures that could be taken to mitigate or eliminate adverse effects on the environment.

(6) A project plan shall describe the public participation activities conducted during planning and shall

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include all of the following:

(a) Significant issues raised by the public and any changes to the project that were made as a result of the public participation process.

(b) A demonstration that there were adequate opportunities for public consultation, participation, and input in the decision-making process during alternative selection.

(c) A demonstration that before the adoption of the project plan, the water supplier held a public hearing on the proposed project not less than 30 days after advertising in local media of general circulation and at a time and place conducive to maximizing public input.

(d) A demonstration that, concurrent with advertisement of the hearing, a notice of public hearing was sent to all affected local, state, and federal agencies and to any public or private parties that have expressed an interest in the proposed project.

(e) A transcript or recording of the hearing, a list of all attendees, any written testimony received, and the water supplier's responses to the issues raised.

(7) A project plan shall include either of the following, as appropriate:

(a) For a water supplier that is a municipality, a resolution adopted by the governing board of the municipality approving the project plan.

(b) For a water supplier that is not a municipality, a statement of intent to implement the project plan.

(8) A project plan shall not have as a primary purpose the construction of or expansion of a waterworks system to accommodate future development.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997.

Popular name: Act 451

Popular name: NREPA

324.5406 Projects eligible for assistance; priority list; award of points; annual submission to legislative standing committees; segmenting of projects; equitable distribution of funding; priority list to be effective first day of fiscal year.

Sec. 5406. (1) The department shall annually develop a priority list of projects eligible for assistance under this part. Projects that are not funded during the year that a priority list developed under this section is in effect shall be automatically prioritized on the next annual list using the same criteria, unless the water supplier submits an amendment to its project plan that introduces new information to be used as the basis for prioritization. The priority list shall be based on project plans submitted by water suppliers under section 5405 and the criteria listed in subdivisions (a) through (f). Each project shall be assigned points up to a maximum of 1,000. The point values are maximum values available for each category or subcategory listed in this section and shall only be awarded if the project substantially addresses the problem for which the point award is given. If a project is primarily designed to replace individual wells at private homes, 50% or more of the homes in the affected area shall meet equivalent water quality or infrastructure deficiency criteria listed in subdivisions (a) through (f) in order to receive the maximum available points. If less than 50% of the homes in the affected area can demonstrate deficiencies, 1/2 of the total points available shall be awarded. Points shall be awarded as follows:

(a) A maximum of 450 points may be awarded to a project that addresses drinking water quality as outlined in Act 399, if the project:

(*i*) Is designed to eliminate an acute violation of a drinking water standard as described in R 325.10401 to R 325.10420 of the Michigan administrative code. A violation of a surface water treatment technique, or if a waterborne disease outbreak has been documented, 250 points shall be awarded for each violation.

(*ii*) Is designed to eliminate a violation of a drinking water standard other than those outlined in subparagraph (*i*), 200 points shall be awarded for each violation.

(*iii*) Is designed to upgrade a facility to maintain compliance with drinking water standards or system capacity requirements, 150 points shall be awarded.

(*iv*) Is designed to eliminate an exceedance of a secondary maximum contaminant level for aesthetic water quality, 25 points shall be awarded.

(b) A maximum of 350 points may be awarded to a project that addresses infrastructure improvements, as follows:

(*i*) If source or treatment facilities are upgraded, including the watermains to connect to the distribution system, a maximum of 125 points shall be awarded, if the improvement is:

(A) To meet minimum capacity requirements, 100 points shall be awarded.

(B) For reliability, 75 points shall be awarded.

(C) For other source or treatment facility upgrades not included in subparagraph (*i*)(A) or (B), 25 points

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shall be awarded.

(D) To satisfy the conditions of a formal enforcement action, 25 points shall be awarded. Points awarded for formal enforcement actions are in addition to the maximum points allowable in any category.

(E) For source water protection, 50 points shall be awarded.

(*ii*) If transmission or distribution watermains are upgraded, a maximum of 125 points shall be awarded, if the improvement is:

(A) To meet minimum capacity where flow or residual pressure is less than acceptable, 100 points shall be awarded.

(B) For reliability, including looping or redundant feeds, 75 points shall be awarded.

(C) Other transmission or distribution system upgrades not included in subparagraph (*ii*)(A) or (B), 25 points shall be awarded.

(D) To satisfy the conditions of a formal enforcement action, 25 points shall be awarded. Points awarded for formal enforcement actions are in addition to the maximum points allowable in any category.

(*iii*) If water storage facilities or pumping stations are upgraded, a maximum of 125 points shall be awarded, if the improvement is:

(A) To meet minimum capacity where storage or pumping capacity is less than minimum requirements, 100 points shall be awarded.

(B) For reliability, 75 points shall be awarded.

(C) Other storage facility or pumping station upgrades not included in subparagraph (*iii*)(A) or (B), 25 points shall be awarded.

(D) To satisfy the conditions of a formal enforcement action, 25 points shall be awarded. Points awarded for formal enforcement actions are in addition to the maximum points allowable in any category.

(c) A maximum of 50 points shall be awarded based on the population served by the water system according to the following table. However, a transient noncommunity water supply as defined in section 2 of Act 399, MCL 325.1002, is eligible for 1/2 of the point value listed in the following table:

Population	Points
>50,000	50
10,001 – 50,000	40
3,301 – 10,000	30
501 – 3,300	20
0 – 500	10

(d) A maximum of 50 points shall be awarded to a community water supply that serves a disadvantaged community.

(e) A maximum of 100 points shall be awarded for projects that include consolidation as follows:

(*i*) If 1 or more public water supplies are brought into compliance with state drinking water standards as a result of consolidation, 100 points shall be awarded.

(*ii*) If deficiencies, which are documented in writing by the department, at 1 or more public water supplies are corrected as a result of consolidation, 60 points shall be awarded.

(*iii*) Other consolidations, not included under subparagraph (*i*) or (*ii*), shall be awarded 40 points.

(f) For communities that have completed an approved source water protection program, 100 points shall be awarded.

(g) After scoring, using the criteria in subdivisions (a) through (f), if 2 or more projects have the same score, the following tie-breaker shall be applied:

(*i*) If the system has fewer than 2 violations of the monitoring, record-keeping, and reporting requirements of Act 399 in the previous 2-year reporting period, or no violations if ownership of the system has changed in the previous 2 years, it shall rank above systems having more violations.

(*ii*) After applying the tie-breaker in subparagraph (*i*), if 2 or more projects score exactly the same, a calculation of the cost per population served by the water system shall be made. The affected projects shall be ranked with the highest ratio of cost to population ranked higher.

(2) The priority list shall be submitted annually to the chairpersons of the senate and house of representatives standing committees that primarily consider legislation pertaining to the protection of public health and the environment.

(3) In preparing the priority list, to ensure that a disproportionate share of available funds for a given fiscal year is not committed to a single water supply project, the department may segment a project if either of the following criteria is present:

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

(b) The department has approved a water supplier's application for segmenting a project.

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(4) Segments of a project that have been segmented under subsection (3) shall be assigned priority points based on the project as identified in the project plan. After funding assistance for the first segment is accepted, the remaining segments will retain first priority for funding assistance on the next 3 fiscal year priority lists. All projects with previously funded segments will be designated with first priority. Ranking order for these projects to receive funding assistance will be subject to the relative ranking of all first segment projects.

(5) In preparing the intended use plan, the department shall make every effort to assure that funding for assistance is equitably distributed among public water supplies of varying sizes.

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

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. 2012, Act 561, Imd. Eff. Jan. 2, 2013.

Popular name: Act 451

Popular name: NREPA

324.5407 Identification of projects in fundable range.

Sec. 5407. The department shall annually identify those projects in the fundable range of the priority list. Following the identification of projects in the fundable range, the department shall review, generally in priority order, the project plans for these projects and, following completion of the environmental review process described in section 5408, either approve or disapprove the project plans.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997.

Popular name: Act 451

Popular name: NREPA

324.5408 Project plan; environmental review; categorical exclusion; criteria; environmental assessment; finding of no significant impact; environmental impact statement; record of decision; project reevaluation for compliance with national environmental policy act requirements; action prohibited during public comment period.

Sec. 5408. (1) The department shall conduct an environmental review of the project plan of each project in the fundable range of the priority list to determine whether any significant impacts are anticipated and whether any changes can be made in the project to eliminate significant adverse impacts. As part of this review, the department may require the submittal of additional information or additional public participation and coordination to justify the environmental determination.

(2) Based on the environmental review under subsection (1), the department may issue a categorical exclusion for categories of actions that do not individually, cumulatively over time or in conjunction with other federal, state, local, or private actions have a significant adverse effect on the quality of the human environment or public health. Additional environmental information documentation, environmental assessments, and environmental impact statements will not be required for excluded actions.

(3) Following receipt of the project plan, the director shall determine if the proposed public water supply project qualifies for a categorical exclusion and document the decision.

(4) The director may revoke a categorical exclusion and require a complete environmental review if, subsequent to the determination, the director finds any of the following:

(a) The proposed public water supply project no longer qualifies for a categorical exclusion due to changes in the proposed plan.

(b) New evidence exists documenting a serious health or environmental issue.

(c) Federal, state, local, or tribal laws will be violated by the proposed public water supply project.

(5) The proposed project shall not qualify for a categorical exclusion if the director determines any of the following criteria are applicable:

(a) The proposed facilities result in an increase in residuals and sludge generated by drinking water processes, either volume or type, which would negatively impact the performance of the waterworks system or the disposal methods, or would threaten an aquifer recharge zone.

(b) The proposed facilities would provide service to a population greater than 30% of the existing population, unless population projections required in section 5405(3)(e) support projected needs.

(c) The proposed public water supply project is known, or expected, to directly or indirectly affect cultural areas, fauna or flora habitats, endangered or threatened species, or environmentally important natural resource areas.

(d) The proposed public water supply project directly or indirectly involves the extension of transmission systems to new service areas.

(e) The proposed public water supply project has been shown not to be the cost-effective alternative.

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(f) The proposed public water supply project will cause significant public controversy.

(6) If, based on the environmental review under subsection (1), the department determines that an environmental assessment is necessary, the department may describe the following:

(a) The purpose and need for the project.

(b) The project, including its costs.

(c) The alternatives considered and the reasons for their acceptance or rejection.

(d) The existing environment.

(e) Any potential adverse impacts and mitigative measures.

(f) How mitigative measures will be incorporated into the project, as well as any proposed conditions of financial assistance and the means for monitoring compliance with the conditions.

(7) The department may issue a finding of no significant impact, based upon an environmental assessment which documents that potential environmental impacts will not be significant or that they may be mitigated without extraordinary measures.

(8) An environmental impact statement may be required when the department determines any of the following:

(a) The project will have a significant impact on the pattern and type of land use or the growth and distribution of the population.

(b) The effects of the project's construction or operation will conflict with local or state laws or policies.

(c) The project will have significant adverse impacts on any of the following:

(*i*) Wetlands.

(*ii*) Flood plains.

(*iii*) Threatened or endangered species or habitats.

(*iv*) Cultural resources, including any of the following:

(A) Park lands.

(B) Preserves.

(C) Other public lands.

(D) Areas of recognized scenic, recreational, agricultural, archeological, or historical value.

(d) The project will cause significant displacement of population.

(e) The project will directly or indirectly, such as through induced development, have significant adverse effect upon any of the following:

(*i*) Local ambient air quality.

(*ii*) Local noise levels.

(*iii*) Surface water and groundwater quantity or quality.

(*iv*) Shellfish.

(*v*) Fish.

(*vi*) Wildlife.

(*vii*) Wildlife natural habitats.

(f) The project will generate significant public controversy.

(9) Based on the environmental impact statement, a record of decision summarizing the findings of the environmental impact statement shall be issued identifying those conditions under which the project can proceed and maintain compliance with the national environmental policy act of 1969, Public Law 91-190, 42 U.S.C. 4321, 4331 to 4335, and 4341 to 4347.

(10) If 5 or more years have elapsed since a determination of compliance with national environmental policy act, or if significant changes in the project have taken place, the department shall reevaluate the project for compliance with the national environmental policy act requirements. The department may do any of the following:

(a) Reaffirm the original finding of no significant impact or the record of decision through the issuance of a public notice or statement of finding.

(b) Issue an amendment to a finding of no significant impact or revoke a finding of no significant impact and issue a public notice that the preparation of an environmental impact statement is required.

(c) Issue a supplement to a record of decision or revoke a record of decision and issue a public notice that financial assistance will not be provided.

(11) Action regarding approval of a project plan or provision of financial assistance shall not be taken during a 30-day public comment period after the issuance of a finding of no significant impact or record of decision.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997.

Popular name: Act 451

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324.5409 Application for fund assistance; contents; availability of revenue sources; acceptance of applications by department; liability for incurred costs.

Sec. 5409. (1) A water supplier whose project plan is approved or under review by the department under section 5407 may apply for assistance from the fund by submitting an application to the department. A complete application shall include all of the following, if applicable, as determined by the department:

(a) If assistance is in the form of a loan, financial documentation that a dedicated source of revenue is established, consistent with obligations of debt instruments existing at the time assistance is requested, and pledged to both of the following purposes:

(*i*) The timely repayment of principal and interest.

(*ii*) Adequate revenues to fund the operation and maintenance of the project.

(b) Evidence of an approved project plan.

(c) A certified resolution from a water supplier that is a municipality, or a letter of appointment from a water supplier that is not a municipality, designating an authorized representative for the project.

(d) A certification by an authorized representative of the water supplier affirming that the supplier has the legal, institutional, technical, financial, and managerial capability to build, operate, and maintain the project.

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

(f) A set of plans and specifications, developed in accordance with Act 399, which is suitable for bidding.

(g) A certification from an authorized representative of the water supplier that it has, or will have before the start of construction, all applicable state and federal permits required for construction of the project.

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

(i) If applicable, all executed service contracts or agreements.

(j) An agreement that the water supplier will operate the waterworks system in compliance with applicable state and federal laws.

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

(*l*) An agreement that:

(*i*) For water suppliers that are municipalities, all accounts will be maintained in accordance with generally accepted accounting practices, generally accepted government auditing standards, and chapter 75 of title 31 of the United States Code, 31 U.S.C. 7501 to 7507, as required by the federal safe drinking water act.

(*ii*) For water suppliers that are not municipalities, all accounts will be maintained in accordance with generally accepted accounting practices and generally accepted auditing standards.

(m) An agreement that all water supplier contracts with contractors will require them to maintain project accounts in accordance with the requirements of this subsection and provide notice that any subcontractor may be subject to a financial audit as part of an overall project audit.

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

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

(p) If the project is segmented, as provided in section 5406(3), a schedule for completion of the project and adequate assurance that the project will be completed with or without assistance from the fund or that the segmented project will be operational without completion of the entire project.

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

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

(2) A demonstration that a dedicated source of revenue will be available for operating and maintaining the waterworks system and repaying the incurred debt.

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(3) The department shall accept applications for assistance from water suppliers in the fundable range of the priority list and shall determine whether an application for assistance is complete.

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

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997.

Popular name: Act 451

Popular name: NREPA

324.5410 Water suppliers; responsibility to obtain permits or clearances; incorporation of provisions, conditions, and mitigative measures; review of documents by department; enforcement.

Sec. 5410. (1) A water supplier who receives assistance under this part is responsible for obtaining any federal, state, or local permits or clearances required for the project and shall perform any surveys or studies that are required in conjunction with the permits or clearances.

(2) A water supplier who receives assistance under this part shall incorporate all appropriate provisions, conditions, and mitigative measures included in the applicable studies, surveys, permits, clearances, and licenses into the construction documents. These documents are subject to review by the department for conformity with environmental determinations and coordination requirements.

(3) All applicable and appropriate conditions and mitigative measures shall be enforced by the water supplier or its designated representative and shall apply to all construction and post-construction activities, including disposal of all liquid or solid spoils, waste material, and residuals from construction.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997.

Popular name: Act 451

Popular name: NREPA

324.5411 Application for assistance; review by department; order of approval; incorporation of other documents; use of project assistance as matching requirements; eligibility certification.

Sec. 5411. (1) The department shall review a complete application for assistance for a proposed project submitted under section 5409. If the department approves the application for assistance, the department shall issue an order of approval to establish the specific terms of the assistance. The order of approval shall include, but need not be limited to, all of the following:

(a) The term of the assistance.

(b) The maximum principal amount of the assistance.

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

(2) The order of approval under subsection (1) shall incorporate all requirements, provisions, or information included in the application and other documents submitted to the department during the application process.

(3) The department shall not prohibit a water supplier from using assistance for a project to meet match requirements for federal loans or grants for that project.

(4) After issuance of the order of approval under subsection (1), the department shall certify to the authority that the water supplier is eligible to receive assistance.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. 2012, Act 561, Imd. Eff. Jan. 2, 2013.

Popular name: Act 451

Popular name: NREPA

324.5412 Bypassed projects.

Sec. 5412. (1) The department may bypass projects that fail to meet the schedule negotiated and agreed upon between the water supplier and the department, or that do not have approved project plans and specifications and an approvable application 90 days prior to the last day of the state fiscal year, whichever comes first.

(2) A water supplier may submit a written request to the department to extend a project schedule for not more than 60 days. The request shall provide the reason for the noncompliance with the schedule. A water supplier may file 1 additional 30-day extension request to its schedule.

(3) A project bypassed under this section shall not be considered for an order of approval until all other projects have either been funded or rejected. This section does not prohibit the inclusion of the project in the

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priority list of the next annual funding cycle or the resubmission of an application for assistance in the next annual funding cycle.

(4) The department shall provide affected water suppliers with a written notice of intent to bypass not less than 30 days before the bypass action.

(5) For projects bypassed under this section, the department shall transmit to the water supplier an official notice of bypass for the fundable project.

(6) A bypass action under this section does not modify any compliance dates established pursuant to a permit, order, or other document issued by the department or entered as part of an action brought by the state or a federal agency.

(7) After a project is bypassed, the department may award assistance to projects outside the fundable range. Assistance shall be made available to projects outside the fundable range in priority order contingent upon the supplier's satisfaction of all applicable requirements for assistance within the time period established by the department, but not to exceed 60 days from the date of notification. The department shall notify water suppliers with projects outside the fundable range of bypass action, of the amount of bypassed funds available for obligation, and of the deadline for submittal of a complete, approvable application.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997.

Popular name: Act 451

Popular name: NREPA

324.5413 Determination to terminate assistance; issuance of order by department; cause; written notice to water supplier; repayment of outstanding loan balance not affected; other state and federal requirements not relieved; responsibility for settlement costs.

Sec. 5413. (1) The department may make a determination that assistance should be terminated and may issue an order recommending that the authority take appropriate action to terminate assistance.

(2) Cause for making a determination under subsection (1) includes, but is not limited to, 1 or more of the following:

(a) Substantial failure to comply with the terms and conditions of the agreement providing assistance.

(b) A legal finding or determination that the assistance was obtained by fraud.

(c) Practices in the administration of the project that are illegal or that may impair the successful completion or organization of the project.

(d) Misappropriation of assistance for uses other than those set forth in the agreement providing assistance.

(e) Failure to accept an offer of assistance from the fund within a period of 30 days after receipt of a proposed loan agreement from the authority.

(3) The department shall give written notice to the water supplier by certified letter of the intent to issue an order of termination. This notification shall be issued not less than 30 days before the department forwards the order recommending that the authority take appropriate action to terminate assistance.

(4) The termination of assistance by the authority shall not excuse or otherwise affect the water supplier's requirement for repayment of the outstanding loan balance to the fund. The water supplier shall repay the outstanding loan proceeds according to a schedule established by the authority.

(5) Termination of assistance under this section does not relieve the water supplier of any requirements that may exist under state or federal law to construct the project.

(6) Any settlement costs incurred in the termination of project assistance are the responsibility of the water supplier.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997.

Popular name: Act 451

Popular name: NREPA

324.5414 Determination to terminate assistance; petition by water supplier; issuance of order by department; cause; repayment of outstanding loan balance not affected; other state or federal laws not relieved; responsibility for settlement costs.

Sec. 5414. (1) A water supplier may petition the department to make a determination that assistance to that water supplier should be terminated.

(2) Upon receipt of a petition under subsection (1), the department may issue an order recommending the authority to take appropriate action to terminate the assistance for a project for cause. The order is effective on the date the project ceases activities.

(3) Subject to the termination of assistance by the authority and payment of any appropriate termination settlement costs, the department shall issue an order of termination to the authority recommending appropriate

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action.

(4) The termination of assistance by the authority does not excuse or otherwise affect the water supplier's requirement for repayment of the outstanding loan balance to the fund. The water supplier shall repay the outstanding loan proceeds according to a schedule established by the authority.

(5) Termination of assistance under this section does not relieve the water supplier of any requirements that may exist under state or federal law to construct the project.

(6) Any settlement costs incurred in the termination of project assistance are the responsibility of the water supplier.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997.

Popular name: Act 451

Popular name: NREPA

324.5415 Annual establishment of interest rates; criteria.

Sec. 5415. (1) The department shall annually establish the interest rates to be assessed for projects receiving assistance under this part. These rates of interest shall be in effect for loans made during the next state fiscal year.

(2) In establishing the interest rates under subsection (1), all of the following criteria shall be considered:

(a) Future demands.

(b) Present demands.

(c) Market conditions.

(d) Cost of compliance with program elements.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997.

Popular name: Act 451

Popular name: NREPA

324.5416 Administration and implementation costs; payment sources.

Sec. 5416. The costs of administering and implementing this part by the department, the designated agents of the department, and the authority may be paid from funds annually appropriated by the legislature from 1 or more of the following sources:

(a) An amount taken from the federal capitalization grant, subject to the limitations prescribed in the federal safe drinking water act.

(b) A local match provided by the water supplier receiving assistance not to exceed the department's administrative costs associated with providing the assistance.

(c) Interest or earnings realized on loan repayments to the fund, unless the earnings are pledged to secure or repay any indebtedness of the authority.

(d) Proceeds of bonds or notes issued pursuant to the fund and sold by the authority.

(e) Any other money appropriated by the legislature.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997.

Popular name: Act 451

Popular name: NREPA

324.5417 Powers of department.

Sec. 5417. In implementing this part, the department may do 1 or more of the following:

(a) Make, execute, and deliver contracts, conveyances, and other instruments necessary or convenient for the implementation of this part.

(b) Solicit and accept gifts, grants, loans, allocations, appropriations, and other aid, including capitalization grant awards, from any person or the federal, state, or a local government or any agency of the federal, state, or local government, enter into agreements with any person or the federal, state, or a local government, or participate in any other way in any federal, state, or local government program consistent with this part and the purposes of this part.

(c) Expend federal and state money allocated under the federal safe drinking water act for any of the following purposes, in accordance with that act:

(*i*) Fund activities authorized under section 1452(g)(2) of the federal safe drinking water act, which may include fund administration and the provision of set-asides annually identified as part of an intended use plan.

(*ii*) Fund implementation of a technical assistance program created in Act 399 and used by the state to provide technical assistance to public water systems serving not more than 10,000 persons.

(*iii*) Fund activities authorized under section 1452(k) of the federal safe drinking water act, which may include the lending of money for certain source water protection efforts, assisting in the implementation of

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capacity development strategies, conducting source water assessments, and implementing wellhead protection programs.

(d) Negotiate and enter into agreements and amendments to agreements with the federal government to implement establishment and operation of the fund, including capitalization grant agreements and schedules of payments.

(e) Employ personnel as is necessary, and contract for the services of private consultants, managers, counsel, auditors, engineers, and scientists for rendering professional management and technical assistance and advice.

(f) Charge, impose, and collect fees and charges in connection with any transaction authorized under this part and provide for reasonable penalties for delinquent payment of fees or charges.

(g) Review and approve all necessary documents in a water supplier's application for assistance and issue an order authorizing assistance to the authority.

(h) Promulgate rules necessary to carry out the purposes of this part and to exercise the powers expressly granted in this part.

(i) Administer, manage, and do all other things necessary or convenient to achieve the objectives and purposes of the fund, the authority, this part, or other state and federal laws that relate to the purposes and responsibilities of the fund.

(j) Apply for a capitalization grant and prepare, submit, and certify any required or appropriate information with that application.

(k) Establish priority lists and fundable ranges for projects and the criteria and methods used to determine the distribution of the funds available to the fund among the various types of assistance to be offered and select projects to be funded.

(*l*) Prepare and submit an annual intended use plan and an annual report as required under the federal safe drinking water act. The department shall annually invite stakeholders including, but not limited to, representatives of water utilities, local units of government, agricultural interests, industry, public health organizations, medical organizations, environmental organizations, consumer organizations, and drinking water consumers who are not affiliated with any of the other represented interests, to 1 or more public meetings to provide recommendations for the development of the annual intended use plan as it relates to the set-asides allowed under the federal safe drinking water act.

(m) Perform other functions necessary or convenient for the implementation of this part.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997.

Popular name: Act 451

Popular name: NREPA

324.5418 Appeal; judicial review.

Sec. 5418. Determinations made by the department may be appealed in writing to the director. Determinations made by the director are final. Judicial review may be sought under section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997.

Popular name: Act 451

Popular name: NREPA

324.5419 Repealed. 2002, Act 451, Eff. Sept. 30, 2003.

Compiler's note: The repealed section pertained to implementation of arsenic testing program.

Popular name: Act 451

Popular name: NREPA

AIR RESOURCES PROTECTION

PART 55
AIR POLLUTION CONTROL

324.5501 Definitions.

Sec. 5501. As used in this part:

(a) “Air contaminant” means a dust, fume, gas, mist, odor, smoke, vapor, or any combination thereof.

(b) “Air pollution” means the presence in the outdoor atmosphere of air contaminants in quantities, of characteristics, under conditions and circumstances, and of a duration that are or can become injurious to human health or welfare, to animal life, to plant life, or to property, or that interfere with the enjoyment of life

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and property in this state, and excludes all aspects of employer-employee relationships as to health and safety hazards. With respect to any mode of transportation, nothing in this part or in the rules promulgated under this part shall be inconsistent with the federal regulations, emission limits, standards, or requirements on various modes of transportation. Air pollution does not mean those usual and ordinary odors associated with a farm operation if the person engaged in the farm operation is following generally accepted agricultural and management practices.

(c) "Air pollution control equipment" means any method, process, or equipment that removes, reduces, or renders less noxious air contaminants discharged into the atmosphere.

(d) "Category I facility" means a fee-subject facility that is a major stationary source as defined in section 302 of title III of the clean air act, 77 Stat. 400, 42 U.S.C. 7602, an affected source as defined pursuant to section 402 of title IV of the clean air act, chapter 360, 104 Stat. 2641, 42 U.S.C. 7651a, or a major stationary source as defined in section 169a of subpart 2 of part C of title I of the clean air act, chapter 360, 91 Stat. 742, 42 U.S.C. 7491.

(e) "Category II facility" means a fee-subject facility that is a major source as defined in section 112 of part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412, or a facility subject to requirements of section 111 of part A of title I of the clean air act, chapter 360, 84 Stat. 1683, 42 U.S.C. 7411, except that a category II facility that also meets the definition of a category I facility is a category I facility.

(f) "Category III facility" means any fee-subject facility that is not a category I or category II facility.

(g) "Clean air act" means chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q, and regulations promulgated under the clean air act.

(h) "Emission" means the emission of an air contaminant.

(i) "Farm operation" has the meaning ascribed to it in the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474.

(j) "Fee-subject air pollutant" means particulates, expressed as PM-10 pursuant to 1996 MR 11, R 336.1116(k), sulfur dioxide, volatile organic compounds, nitrogen oxides, ozone, lead, and any pollutant regulated under section 111 or 112 of part A of title I of the clean air act, chapter 360, 84 Stat. 1683 and 1685, 42 U.S.C. 7411 and 7412, or title III of the clean air act, chapter 360, 77 Stat. 400, 42 U.S.C. 7601 to 7612, 7614 to 7617, 7619 to 7622, and 7624 to 7627.

(k) "Fee-subject facility" means the following sources:

(*i*) Any major source as defined in 40 C.F.R. 70.2.

(*ii*) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of part A of title I of the clean air act, chapter 360, 84 Stat. 1683, 42 U.S.C. 7411, when the standard, limitation, or other requirement becomes applicable to that source.

(*iii*) Any source, including an area source, subject to a standard, limitation, or other requirement under section 112 of part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412, when the standard, limitation, or other requirement becomes applicable to that source. However, a source is not a fee-subject facility solely because it is subject to a regulation, limitation, or requirement under section 112(r) of part A of title I of the clean air act, chapter 360, 84 Stat. 1685, 42 U.S.C. 7412.

(*iv*) Any affected source under title IV.

(*v*) Any other source in a source category designated by the administrator of the United States environmental protection agency as required to obtain an operating permit under title V, when the standard, limitation, or other requirement becomes applicable to that source.

(*l*) "Fund" means the emissions control fund created in section 5521.

(m) "General permit" means a permit to install, permit to operate authorized pursuant to rules promulgated under section 5505(6), or an operating permit under section 5506, for a category of similar sources, processes, or process equipment. General provisions for issuance of general permits shall be provided for by rule.

(n) "Generally accepted agricultural and management practices" has the meaning ascribed to it in the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474.

(o) "Major emitting facility" means a stationary source that emits 100 tons or more per year of any of the following:

(*i*) Particulates.

(*ii*) Sulfur dioxides.

(*iii*) Volatile organic compounds.

(*iv*) Oxides of nitrogen.

(p) "Process" means an action, operation, or a series of actions or operations at a source that emits or has the potential to emit an air contaminant.

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(q) “Process equipment” means all equipment, devices, and auxiliary components, including air pollution control equipment, stacks, and other emission points, used in a process.

(r) “Responsible official” means for the purposes of signing and certifying as to the truth, accuracy, and completeness of permit applications, monitoring reports, and compliance certifications any of the following:

(*i*) For a corporation: a president, secretary, treasurer, or vice-president in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or an authorized representative of that person if the representative is responsible for the overall operation of 1 or more manufacturing, production, or operating facilities applying for or subject to a permit under this part and either the facilities employ more than 250 persons or have annual sales or expenditures exceeding $25,000,000.00, or if the delegation of authority to the representative is approved in advance by the department.

(*ii*) For a partnership or sole proprietorship: a general partner or the proprietor.

(*iii*) For a county or municipality or a state, federal, or other public agency: a principal executive officer or ranking elected official. For this purpose, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(*iv*) For sources affected by the acid rain program under title IV: the designated representative insofar as actions, standards, requirements, or prohibitions under that title are concerned.

(s) “Schedule of compliance” means, for a source not in compliance with all applicable requirements of this part, rules promulgated under this part, and the clean air act at the time of issuance of an operating permit, a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an applicable requirement and a schedule for submission of certified progress reports at least every 6 months. Schedule of compliance means, for a source in compliance with all applicable requirements of this part, rules promulgated under this part, and the clean air act at the time of issuance of an operating permit, a statement that the source will continue to comply with these requirements. With respect to any applicable requirement of this part, rules promulgated under this part, and the clean air act effective after the date of issuance of an operating permit, the schedule of compliance shall contain a statement that the source will meet the requirements on a timely basis, unless the underlying applicable requirement requires a more detailed schedule.

(t) “Source” means a stationary source as defined in section 302(z) of title III of the clean air act, 77 Stat. 400, 42 U.S.C. 7602, and has the same meaning as stationary source when used in comparable or applicable circumstances under the clean air act. A source includes all the processes and process equipment under common control that are located within a contiguous area, or a smaller group of processes and process equipment as requested by the owner or operator of the source, if in accordance with the clean air act.

(u) “Title IV” means title IV of the clean air act, pertaining to acid deposition control, chapter 360, 104 Stat. 2584, 42 U.S.C. 7651 to 7651o.

(v) “Title V” means title V of the clean air act, chapter 360, 104 Stat. 2635, 42 U.S.C. 7661 to 7661f.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 245, Imd. Eff. July 8, 1998.

Popular name: Act 451

Popular name: NREPA

324.5502 Issuance of permit to install or operating permit to municipal solid waste incinerator; applicability of subsection (1); municipal solid waste incinerator existing prior to June 15, 1993.

Sec. 5502. (1) Except as provided in subsection (2), the department shall not issue a permit to install or an operating permit to a municipal solid waste incinerator unless the municipal solid waste incinerator is located at least 1,000 feet from all of the following:

(a) A residential dwelling.

(b) A public or private elementary or secondary school.

(c) A preschool facility for infants or children.

(d) A hospital.

(e) A nursing home.

(2) Subsection (1) does not apply to a municipal solid waste incinerator that existed prior to June 15, 1993, or to the modification; alteration; expansion, including, but not limited to, the addition of 1 or more combustion units and any accompanying features or fixtures; or retrofit of such a municipal solid waste incinerator after June 15, 1993, regardless of whether the activity requires a permit.

(3) For the purposes of this section, a municipal solid waste incinerator existed prior to June 15, 1993 if either of the following applies:

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(a) It was issued a permit to operate or a permit to install for installation, construction, modification, alteration, or retrofit prior to June 15, 1993, unless it was denied a permit to operate prior to June 15, 1993.

(b) It is located at a geographical site at which 1 or more incinerator units incinerated waste during the 6 months prior to June 15, 1993.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 227, Imd. Eff. Dec. 14, 1995;—Am. 1998, Act 6, Imd. Eff. Feb. 6, 1998.

Popular name: Act 451

Popular name: NREPA

324.5503 Powers of department.

Sec. 5503. The department may do 1 or more of the following:

(a) Promulgate rules to establish standards for ambient air quality and for emissions.

(b) Issue permits for the construction and operation of sources, processes, and process equipment, subject to enforceable emission limitations and standards and other conditions reasonably necessary to assure compliance with all applicable requirements of this part, rules promulgated under this part, and the clean air act.

(c) In accordance with this part and rules promulgated under this part, deny, terminate, modify, or revoke and reissue permits for cause. If an application for a permit is denied or is determined to be incomplete by the department, the department shall state in writing with particularity the reason for denial or the determination of incompleteness, and, if applicable, the provision of this part or a rule promulgated under this part that controls the decision.

(d) Compel the attendance of witnesses at proceedings of the department upon reasonable notice.

(e) Make findings of fact and determinations.

(f) Make, modify, or cancel orders that require, in accordance with this part, the control of air pollution.

(g) Enforce permits, air quality fee requirements, and the requirements to obtain a permit.

(h) Institute in a court of competent jurisdiction proceedings to compel compliance with this part, rules promulgated under this part, or any determination or order issued under this part.

(i) Enter and inspect any property as authorized under section 5526.

(j) Receive and initiate complaints of air pollution in alleged violation of this part, rules promulgated under this part, or any determination, permit, or order issued under this part and take action with respect to the complaint as provided in this part.

(k) Require reports on sources and the quality and nature of emissions, including, but not limited to, information necessary to maintain an emissions inventory.

(*l*) Prepare and develop a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of any new air pollution.

(m) Encourage voluntary cooperation by all persons in controlling air pollution and air contamination.

(n) Encourage the formulation and execution of plans by cooperative groups or associations of municipalities, counties or districts, or other governmental units, industries, and others who severally or jointly are or may be the source of air pollution, for the control of pollution.

(o) Cooperate with the appropriate agencies of the United States or other states or any interstate or international agencies with respect to the control of air pollution and air contamination or for the formulation for the submission to the legislature of interstate air pollution control compacts or agreements.

(p) Conduct or cause to be conducted studies and research with respect to air pollution control, abatement, or prevention.

(q) Conduct and supervise programs of air pollution control education including the preparation and distribution of information relating to air pollution control.

(r) Determine by means of field studies and sampling the degree of air pollution in the state.

(s) Provide advisory technical consultation services to local communities.

(t) Serve as the agency of the state for the receipt of money from the federal government or other public or private agencies and the expenditure of that money after it is appropriated for the purpose of air pollution control studies or research or enforcement of this part.

(u) Do such other things as the department considers necessary, proper, or desirable to enforce this part, a rule promulgated under this part, or any determination, permit, or order issued under this part, or the clean air act.

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

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Air Quality Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16 , compiled at MCL 324.99901 of the Michigan Compiled Laws.

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Popular name: Act 451

Popular name: NREPA

Administrative rules: R 336.1101 et seq.; R 336.1122; and R 336.1201 et seq. of the Michigan Administrative Code.

324.5504 Medical waste incineration facility; operating permit required; form and contents of application; compliance; validity and renewal of permit; review of operating permits; retrofitting facility; interim operating permit; rules; receipt of pathological or medical wastes generated off-site; records; definitions.

Sec. 5504. (1) Beginning on June 6, 1991 or on the effective date of the rules promulgated under subsection (5), whichever is later, a facility that incinerates medical waste shall not be operated unless the facility has been issued an operating permit by the department.

(2) An application for an operating permit under subsection (1) shall be submitted in the form and contain the information required by the department. The department shall issue an operating permit only if the facility is in compliance with this part and the rules promulgated under this part.

(3) A permit issued under this section shall be valid for 5 years. Upon expiration, a permit may be renewed.

(4) Within 2 years after the effective date of the rules promulgated under subsection (5), the department shall review all operating permits issued under this part for facilities that incinerate medical waste that were issued permits prior to the promulgation of the rules under subsection (5). If, upon review, the department determines that the facility does not meet the requirements of the rules promulgated under subsection (5) and cannot be retrofitted to comply with these rules, the department shall issue an interim operating permit that is valid for 2 years only. If the facility only needs retrofitting in order to comply with the rules, the facility shall be granted an interim permit that is valid for 1 year only. However, in either case the facility shall comply with this part and all other rules promulgated under this part for the interim period. An interim operating permit shall provide that if the facility is within 50 miles of another facility that is in compliance with the rules promulgated under subsection (5), the facility operating under the interim operating permit may receive only medical waste that is generated on the site of that facility, at a facility owned and operated by the person who owns and operates that facility, or at the private practice office of a physician who has privileges to practice at that facility, if the facility is a hospital. The department shall renew an operating permit for a facility only if the facility is in compliance with this part and the rules promulgated under this part.

(5) The department shall promulgate rules to do both of the following:

(a) Regulate facilities that incinerate medical waste. These rules shall cover at least all of the following areas:

(*i*) Incinerator design and operation.

(*ii*) Ash handling and quality.

(*iii*) Stack design.

(*iv*) Requirements for receiving medical waste from generators outside the facility.

(*v*) Air pollution control requirements.

(*vi*) Performance monitoring and testing.

(*vii*) Record keeping and reporting requirements.

(*viii*) Inspection and maintenance.

(b) Regulate the operation of facilities that incinerate only pathological waste and limited other permitted solid waste.

(6) A permit issued under this section may allow a facility to receive pathological or medical wastes that were generated off the site of the facility. However, the owner or operator of the facility shall keep monthly records of the source of the wastes and the approximate volume of the wastes received by the facility.

(7) As used in this section:

(a) “Medical waste” means that term as it is defined in part 138 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.13801 to 333.13831 of the Michigan Compiled Laws.

(b) “Pathological waste” means that term as it is defined in part 138 of the public health code.

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

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 336.1901 et seq. of the Michigan Administrative Code.

324.5505 Installation, construction, reconstruction, relocation, alteration, or modification of process or process equipment; permit to install or operate required; rules; trial operation;

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rules for issuance of general permit or certain exemptions; temporary locations; nonrenewable permits; failure of department to act on applications; appeal of permit actions.

Sec. 5505. (1) Except as provided in subsection (4), a person shall not install, construct, reconstruct, relocate, alter, or modify any process or process equipment without first obtaining from the department a permit to install, or a permit to operate authorized pursuant to rules promulgated under subsection (6) if applicable, authorizing the conduct or activity.

(2) The department shall promulgate rules to establish a permit to install program to be administered by the department. Except as provided in subsections (4) and (5), the permit to install program is applicable to each new or modified process or process equipment that emits or may emit an air contaminant. The start date for emissions offsets eligible to be applied to a permit to install shall be the date established by federal rule or, if a date is not established by federal rule, January 1 of the year after the emissions baseline year used for the purpose of preparing the relevant state implementation plan. The department shall make available information in the permit database and the air emissions inventory established under section 5503(k), to identify emissions reductions that may be used as emissions offsets. This subsection does not authorize the department to seek permit changes to make emissions reductions available for use as emissions offsets.

(3) A permit to install may authorize the trial operation of a process or process equipment to demonstrate that the process or process equipment is operating in compliance with the permit to install issued under this section.

(4) The department may promulgate rules to provide for the issuance of general permits and to exempt certain sources, processes, or process equipment or certain modifications to a source, process, or process equipment from the requirement to obtain a permit to install or a permit to operate authorized pursuant to rules promulgated under subsection (6). However, the department shall not exempt any new source or modification that would meet the definition of a major source or major modification under parts C and D of title I of the clean air act, 42 USC 7470 to 7515.

(5) The department may issue a permit to install, a general permit, or a permit to operate authorized under rules promulgated under subsection (6) if applicable, that authorizes installation, operation, or trial operation, as applicable, of a source, process, or process equipment at numerous temporary locations. Such a permit shall include terms and conditions necessary to assure compliance with all applicable requirements of this part, the rules promulgated under this part, and the clean air act, including those necessary to assure compliance with all applicable ambient air standards, emission limits, and increment and visibility requirements pursuant to part C of title I of the clean air act, 42 USC 7470 to 7492, at each location, and shall require the owner or operator of the process, source, or process equipment to notify the department at least 10 days in advance of each change in location.

(6) The department may promulgate rules to establish a program that authorizes issuance of nonrenewable permits to operate for sources, processes, or process equipment that are not subject to the requirement to obtain a renewable operating permit pursuant to section 5506.

(7) The failure of the department to act on an administratively and technically complete application for a permit to install, a general permit, or a permit to operate authorized under rules promulgated under subsection (6), in accordance with a time requirement established pursuant to this part, rules promulgated under this part, or the clean air act may be treated as a final permit action solely for the purposes of obtaining judicial review in a court of competent jurisdiction to require that action be taken by the department on the application without additional delay.

(8) Any person may appeal the issuance or denial by the department of a permit to install, a general permit, or a permit to operate authorized in rules promulgated under subsection (6), for a new source in accordance with section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631. Petitions for review shall be the exclusive means to obtain judicial review of such a permit and shall be filed within 90 days after the final permit action, except that a petition may be filed after that deadline only if the petition is based solely on grounds arising after the deadline for judicial review. Such a petition shall be filed no later than 90 days after the new grounds for review arise. Appeals of permit actions for existing sources are subject to section 5506(14).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2005, Act 57, Imd. Eff. June 30, 2005.

Popular name: Act 451

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324.5506 Operating permit.

Sec. 5506. (1) After the date established pursuant to subsections (3) and (4)(n), if an application for an

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operating permit is required to be submitted, a person shall not operate a source that is required to obtain an operating permit under section 502a of title V of the clean air act, chapter 360, 104 Stat. 2641, 42 U.S.C. 7661a, and which is thereby subject to the requirements of this section except in compliance with an operating permit issued by the department. A permit issued under this section does not convey a property right or an exclusive privilege.

(2) If a person who owns or operates a source has submitted a timely and administratively complete application for an operating permit, including an application for renewal of an operating permit, but final action has not been taken on the application, the source's failure to have an operating permit is not a violation of subsection (1) unless the delay in final action is due to the failure of the person owning or operating the source to submit information required or requested to process the application. A source required to have a permit under this section is not in violation of subsection (1) before the date on which the source is required to submit an application pursuant to subsections (3) and (4)(n). Except as otherwise provided in subsection (5), expiration of an operating permit terminates a person's right to operate a source. This subsection does not waive an applicable requirement to obtain a permit under section 5505.

(3) A person who owns or operates a source required to have an operating permit pursuant to this section shall submit to the department within 12 months after the date on which the source becomes subject to the requirement to obtain a permit under subsection (1), or on an earlier date specified by rule, a compliance plan and an administratively complete application for an operating permit signed by a responsible official, who shall certify the accuracy of the information submitted. The department shall approve or disapprove a timely and administratively complete application, and shall issue or deny the operating permit within 18 months after the date of receipt of the compliance plan and an administratively complete operating application, except that the department shall establish a phased schedule for acting on the timely and administratively complete operating permit applications submitted within the first full year after the operating permit program becomes effective. The schedule shall assure that at least 1/3 of the applications will be acted on by the department annually over a period not to exceed 3 years after the operating permit program becomes effective.

(4) The department shall promulgate rules to establish an operating permit program required under title V to be administered by the department. This permit program shall include all of the following and, at a minimum, shall be consistent with the requirements of title V:

(a) Provisions defining the categories of sources that are subject to the operating permit requirements of this section. Operating permits under this section are not required for any source category that is not required to obtain an operating permit under section 502(a) of the clean air act, title V of chapter 360, 104 Stat. 2641, 42 U.S.C. 7661a.

(b) Requirements for operating permit applications, including standard application forms, the minimum information that must be submitted with an administratively complete application, and criteria for determining in a timely fashion the administrative completeness of an application.

(c) A requirement that each operating permit application include a compliance plan describing how the source will comply with all applicable requirements of this part, rules promulgated under this part, and the clean air act.

(d) Provisions for inspection, entry, monitoring, record keeping, and reporting applicable to each operating permit issued under this section.

(e) Requirements and provisions for expeditiously determining when applications are technically complete, for processing applications.

(f) Provisions for transmitting copies of each operating permit application and proposed and final permits, including each modification or renewal, to the administrator of the United States environmental protection agency, and for notifying all other states whose air quality may be affected and are contiguous to this state and for providing an opportunity for those states to provide written recommendations on each operating permit application and proposed permit, pursuant to the requirements of section 505(a) and (d) of the clean air act, title V of chapter 360, 104 Stat. 2643, 42 U.S.C. 7661d.

(g) Provisions for issuance of operating permits and, in accordance with this part and rules promulgated under this part, for denial, termination, modification, revocation, renewal, and revision of operating permits for cause.

(h) Provisions to allow for changes within a permitted source without a revision to the operating permit, if the changes are not modifications under any provision of title I of the clean air act, chapter 360, 77 Stat. 392, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515, and the changes do not exceed the emissions allowed under the operating permit, if the owner or operator of the source provides the department and the administrator of the United States environmental protection agency with written notification at least 7 days in advance of the proposed changes. However, the department may provide a different time frame for an emergency as defined in section 5527. The emissions allowed under the operating

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permit include any enforceable emission limitation, standard, or other condition, including a work practice standard, determined by the department to be required by an applicable requirement of this part, rules promulgated under this part, or the clean air act, or that establishes an emission limit or an enforceable emissions cap that the source has assumed to avoid an applicable requirement of this part, rules promulgated under this part, or the clean air act, to which the source would otherwise be subject. These provisions shall include the following:

(*i*) Changes that contravene an express permit condition. Such changes shall not include changes that would violate any applicable requirement of this part, the rules promulgated under this part, or the clean air act, or changes that would contravene any applicable requirement for monitoring, record keeping, reporting, or compliance certification.

(*ii*) Changes that involve emissions trading if trading has been approved by the administrator of the United States environmental protection agency as a part of the state implementation plan.

(i) Provisions to allow changes within a permitted source, pursuant to 40 C.F.R. 70.4(b)(14), that are not addressed or prohibited by the operating permit, if all of the following criteria are met:

(*i*) The change meets all applicable requirements of this part, the rules promulgated under this part, and the clean air act and does not violate any existing emission limitation, standard, or other condition of the operating permit.

(*ii*) The change does not affect any applicable requirement of the acid rain program under title IV and is not a modification under any provision of title I of the clean air act, chapter 360, 77 Stat. 392, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515.

(*iii*) The source provides prompt written notice to the department and the administrator of the United States environmental protection agency, except for changes that qualify as insignificant processes or activities pursuant to section 5507(2).

(j) Provisions to allow changes within a permitted source, pursuant to 40 C.F.R. 70.7(e)(2), that may be made immediately after the source files an application with the department, if all of the following criteria are met:

(*i*) The change does not violate any applicable requirement of this part, the rules promulgated under this part, or the clean air act.

(*ii*) The change does not significantly affect an existing monitoring, record keeping, or reporting requirement in the operating permit.

(*iii*) The change does not require or modify a case-by-case determination of an emission limitation or other standard, or a source-specific determination, for temporary sources, of ambient air impacts, or a visibility or increment analysis.

(*iv*) The change does not seek to establish or modify an emission limitation, standard, or other condition of the operating permit that the source has assumed to avoid an applicable requirement of this part, the rules promulgated under this part, or the clean air act, to which the source would otherwise be subject.

(*v*) The change is not a modification under any provision of title I of the clean air act, chapter 360, 77 Stat. 392, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515.

(k) Provisions for expeditiously handling administrative changes within a permitted source, pursuant to 40 C.F.R. 70.7(d). These changes are limited to the following:

(*i*) Correction of a typographical error.

(*ii*) A change in the name, address, or phone number of any person identified in the permit, or other similar minor administrative change.

(*iii*) A change that requires more frequent monitoring or reporting by the person owning or operating the source.

(*iv*) A change in ownership or operational control of the source, if the department determines that no other change in the operating permit is necessary, and if a written agreement containing a specific date for transfer of operating permit responsibility, coverage, and liability between the current and new owners or operators has been submitted to the department.

(*v*) Incorporation into the operating permit of the requirements of a permit to install issued pursuant to section 5505, if the permit to install has met procedural requirements that are substantially equivalent to the requirements of this section, including the content of the permit, and the provisions for participation by the United States environmental protection agency and other affected states and participation of the public under section 5511.

(*l*) Provisions for including reasonably anticipated alternate operating scenarios in an operating permit, pursuant to 40 C.F.R. 70.6(a)(9).

(m) Provisions to allow for the trading of emission increases and decreases within a permitted source solely for the purpose of complying with an enforceable emissions cap that is established in the permit

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pursuant to 40 C.F.R. part 70.4(b)(12)(*iii*), independent of any otherwise applicable requirements of this part, the rules promulgated under this part, or the clean air act.

(n) A schedule of the dates when submittal of an application for an operating permit is required for the source categories subject to this section and a phased schedule for taking final action on those applications.

(5) Each operating permit issued under this section shall be for a fixed term not to exceed 5 years. A permit applicant shall submit a timely application for renewal of an operating permit at least 6 months, but not more than 18 months, prior to the expiration of the term of the existing operating permit. If a timely and administratively complete application is submitted, but the department has not approved or denied the renewal permit before the expiration of the term of the existing permit, the existing permit shall not expire until the renewal permit is approved or denied.

(6) Each operating permit issued pursuant to this section shall include those enforceable emissions limitations and standards applicable to the source, if any, and other conditions necessary to assure compliance with the applicable requirements of this part, rules promulgated under this part, and the clean air act, a schedule of compliance, and a requirement that the owner or operator of a source submit to the department, at least every 6 months, a report summarizing the results of any required monitoring. Each operating permit issued pursuant to this section shall also include a severability clause to ensure the continued validity of the unchallenged terms and conditions of the operating permit if any portion of a permit is challenged.

(7) The department shall require revision of an operating permit prior to the expiration of the permit consistent with section 5506(4)(g), for any of the following reasons or to do any of the following:

(a) To incorporate new applicable emissions limitations, standards, or rules promulgated under this part or regulations promulgated under the clean air act, issued or promulgated after the issuance of the permit, if 3 or more years remain in the term of the permit. A revision shall occur as expeditiously as practicable, but not later than 18 months after the promulgation of the emission limitation, standard, rule, or regulation. A revision is not required if the effective date of the emission limitation, standard, rule, or regulation is after the expiration date of the permit.

(b) To incorporate new applicable standards and requirements of the acid rain program under title IV into the operating permits of sources affected by that program.

(c) If the department determines that the permit contains a material mistake; that information required by this part, rules promulgated under this part, or the clean air act was omitted; or that an inaccurate statement was made in establishing the emissions limitations, standards, or conditions of the permit.

(d) If the department determines that the permit must be revised to assure compliance with the applicable requirements of this part, rules promulgated under this part, or the clean air act.

(8) At the request of the permit holder, a permit revision under subsection (7) may be treated as a permit renewal if it complies with the applicable requirements for permit renewals of this part, rules promulgated under this part, and the clean air act.

(9) A person who owns or operates a source subject to an operating permit issued pursuant to this section shall promptly report to the department any deviations from the emissions limitations, standards, or conditions of the permit and shall annually certify to the department that the source has been and is in compliance with all emissions limitations, standards, and conditions of the permit, except for those deviations reported to the department, during the reporting period. A responsible official shall sign all reports submitted pursuant to this subsection.

(10) The department shall not approve or otherwise issue any operating permit for a source required to obtain an operating permit pursuant to section 502(a) of title V of the clean air act, chapter 360, 104 Stat. 2641, 42 U.S.C. 7661a, if the administrator of the United States environmental protection agency objects to issuance of the permit in a timely manner pursuant to section 505(b) of title V of the clean air act, chapter 360, 104 Stat. 2643, 42 U.S.C. 7661d.

(11) Each operating permit shall contain a statement that compliance with an operating permit issued in accordance with this section is compliance with subsection (1). In addition, the statement shall provide that compliance with the operating permit is compliance with other applicable requirements of this part, rules promulgated under this part, and the clean air act, as of the date of permit issuance if either of the following requirements is met:

(a) The permit specifically includes the applicable requirement.

(b) The permit includes a determination that any other requirements that are specifically referred to in the determination are not applicable.

(12) An application for an operating permit may include a request that the permit include reference to specific requirements of this part, rules promulgated under this part, or the clean air act that the person owning or operating the source believes are not applicable to the source. The operating permit shall include a determination of applicability for the requirements included in the request.

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(13) Subsection (11) does not apply to a change at a source made pursuant to subsection (4)(h), (i), or (j). Subsection (11) does not apply to a change in a source made pursuant to subsection (4)(k) until the change is incorporated into the operating permit.

(14) A person who owns or operates an existing source that is required to obtain an operating permit under this section, a general permit, or a permit to operate authorized under rules promulgated under section 5505(6) may file a petition with the department for review of the denial of his or her application for such a permit, the revision of any emissions limitation, standard, or condition, or a proposed revocation of his or her permit. This review shall be conducted pursuant to the contested case and judicial review procedures of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. Any person may appeal the issuance or denial of an operating permit in accordance with section 631 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.631 of the Michigan Compiled Laws. A petition for judicial review is the exclusive means of obtaining judicial review of a permit and shall be filed within 90 days after the final permit action. Such a petition may be filed after that deadline only if it is based solely on grounds arising after the deadline for judicial review and if the appeal does not involve applicable standards and requirements of the acid rain program under title IV. Such a petition shall be filed within 90 days after the new grounds for review arise.

(15) The failure of the department to act on a technically and administratively complete application or renewal application for an operating permit in accordance with a time requirement established pursuant to subsection (3) and rules promulgated under subsection (4)(n) is final permit action solely for the purposes of obtaining judicial review in a court of competent jurisdiction to require that action be taken by the department without additional delay on the application or renewal application.

(16) The department may, after notice and opportunity for public hearing, pursuant to the requirements of section 5511, issue a general permit covering numerous similar sources, processes, or process equipment, or a permit that authorizes operation of a source at numerous temporary locations. A general permit or a permit that authorizes operation of a source at numerous temporary locations shall comply with all requirements applicable to operating permits pursuant to this section. A permit that authorizes operation of a source at numerous temporary locations shall include terms and conditions necessary to assure compliance with all applicable requirements of this part, rules promulgated under this part, and the clean air act, including those necessary to assure compliance with all applicable ambient air standards, applicable emission limits, and applicable increment and visibility requirements pursuant to part C of title I of the clean air act, chapter 360, 91 Stat. 731, 42 U.S.C. 7470 to 7479 and 7491 to 7492, at each authorized location and shall require the owner or operator of the source to notify the department at least 10 days in advance of each change in location. A source covered by a general permit is not relieved from the obligation to file an application for a permit pursuant to subsections (3) and (5).

(17) As used in this section, “technically complete” means, for the purposes of an application for an operating permit required by this section, all of the information required for an administratively complete application and any other specific information requested by the department that may be necessary to implement and enforce all applicable requirements of this part, the rules promulgated under this part, or the clean air act, or to determine the applicability of those requirements. An application is not technically complete if it omits information needed to determine the applicability of any lawful requirement or to enforce any lawful requirement or any information necessary to evaluate the amount of the annual air quality fee for the source.

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

Popular name: Act 451

Popular name: NREPA

324.5507 Administratively complete action; exemption from information requirements; “compliance plan” defined.

Sec. 5507. (1) An administratively complete application means an application for an operating permit required in section 5506 that is submitted on standard application forms provided by the department and includes all of the following:

(a) Source identifying information, including company name and address, owner's name, and the names, addresses, and telephone numbers of the responsible official and permit contact person.

(b) A description of the source's processes and products using the applicable standard industrial classification codes.

(c) A description of all emissions of air contaminants emitted by the source that are regulated under this part, the rules promulgated under this part, and the clean air act.

(d) A schedule for submission of annual compliance certifications during the permit term, unless more

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frequent certifications are specified by an underlying applicable requirement.

(e) A certification by a responsible official of the truth, accuracy, and completeness of the application. The certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the application are true, accurate, and complete.

(f) For each process, except for any insignificant processes listed by the department pursuant to subsection (2), all of the following:

(*i*) A description of the process using the standard classification code.

(*ii*) Citation and description of all applicable requirements, including any applicable test method for determining compliance with each applicable requirement.

(*iii*) Actual and allowable emission rates in tons per year and in terms that are necessary to establish compliance with all applicable emission limitations and standards, including all calculations used to determine those emission rates. Actual emission information shall be used for verifying the compliance status of the process with all applicable requirements. Actual emission information shall not be used, except at the request of the permit applicant, to establish new emission limitations or standards or to modify existing emission limitations or standards unless such limitation or standard is required to assure compliance with a specific applicable requirement.

(*iv*) Information on fuels, fuel use, raw materials, production rates, and operating schedules, to the extent it is needed to determine or regulate emissions.

(*v*) Limitations on source operation affecting emissions or any work practice standards, if applicable.

(*vi*) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(*vii*) Identification and description of all emission points in sufficient detail to establish the basis for fees or to determine applicable requirements.

(*viii*) Other information required by any applicable requirement.

(*ix*) A statement of the methods proposed to be used for determining compliance with the applicable requirements under the operating permit, including a description of monitoring, record keeping, and reporting requirements and test methods.

(*x*) An explanation of any proposed exemptions from otherwise applicable requirements.

(*xi*) Information necessary to define any alternative operating scenarios that are to be included in the operating permit or to define permit terms and conditions implementing section 5506(4)(*l*).

(*xii*) A compliance plan.

(*xiii*) A schedule of compliance.

(2) The department shall promulgate a list of insignificant processes or activities, which are exempt from all or part of the information requirements of this section. For any insignificant processes or activities that are exempt because of size or production rate, the application shall include a list of the insignificant processes and activities.

(3) As used in section 5506 and this section, "compliance plan" means a description of the compliance status of the source with respect to all applicable requirements for each process as follows:

(a) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(b) For applicable requirements that will become effective during the permit term, a statement that the source will meet these requirements on a timely basis.

(c) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

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

Popular name: Act 451

Popular name: NREPA

324.5508 "Section 112" defined; source, process, or process equipment not subject to best available control technology for toxics requirements or health based screening level requirements.

Sec. 5508. (1) As used in this section, "section 112" means section 112 of part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412.

(2) A new, modified, or existing source, process, or process equipment for which standards have been promulgated under section 112(d) or for which a control technology determination has been made pursuant to section 112(g) or 112(j) is not subject to the best available control technology for toxics (T-BACT) requirements of rules promulgated under this part for any of the following:

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(a) The hazardous air pollutants listed in section 112(b).

(b) Other toxic air contaminants that are volatile organic compounds, if the standard promulgated under section 112(d) or the determination made under section 112(g) or 112(j) controls similar compounds that are also volatile organic compounds.

(c) Other toxic air contaminants that are particulate matter, if the standard promulgated under section 112(d) or the determination made under section 112(g) or 112(j) controls similar compounds that are also particulate matter.

(d) Other toxic air contaminants that are similar to the compounds controlled by the standard promulgated under section 112(d) or controlled by the determination made under section 112(g) or 112(j).

(3) A new, modified, or existing source, process, or process equipment for which standards have been promulgated under section 112(f) is not subject to the health based screening level requirements in rules promulgated under this part for the hazardous air pollutants listed in section 112(b).

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

Popular name: Act 451

Popular name: NREPA

324.5509 "Malfunction" defined; rules; prohibition; actions taken by department; enforcement; conditions for applicability of subsections (3) to (5).

Sec. 5509. (1) As used in this section, "malfunction" means any sudden failure of a source, air pollution control equipment, process, or process equipment to operate in a normal or usual manner. A malfunction exists only for the time reasonably necessary to implement corrective measures. Malfunction does not include failures arising as a result of substandard maintenance that does not conform to industry standards, or periods when the source is being operated carelessly or in a manner that is not consistent with good engineering practice or judgment.

(2) By May 13, 1995, the department shall promulgate general rules, and may promulgate rules that pertain to specific categories of sources, that are consistent with, but are not limited to, the requirements of the clean air act, to establish standards of performance, emission standards, and requirements for monitoring, record keeping, and reporting that will apply during start-up, shutdown, and malfunction of a source, process, or process equipment. The rules shall require that during periods of start-up, shutdown, and malfunction, the operator shall to the extent reasonably possible operate a source, process, or process equipment in a manner consistent with good air pollution control practices for minimizing emissions.

(3) During periods of start-up, shutdown, or malfunction of a source, process, or process equipment, the emission of an air contaminant in excess of a standard or emission limitation, or a violation of any other requirement, established by this part, a rule promulgated under this part, or specified in a permit to install, a permit to operate authorized pursuant to rules promulgated under section 5505(6), or an operating permit under section 5506, is prohibited unless the following applicable requirements and any applicable rules promulgated pursuant to subsection (2) are complied with:

(a) At all times, including periods of start-up, shutdown, and malfunction, owners and operators shall, to the extent practicable, operate a source, process, or process equipment in a manner consistent with good air pollution control practice for minimizing emissions.

(b) Notice of a malfunction of a source, process, or process equipment that results in excess emissions of an air contaminant shall be provided to the department if the malfunction results in excess emissions that continue for more than 2 hours. Notice by any reasonable means includes but is not limited to oral, telephonic, or electronic notice, and shall be provided as soon as reasonably possible, but no later than 2 business days after the discovery of the malfunction. Written notice of malfunction shall be provided within 10 days after the malfunction has been corrected. Written notice shall specify all of the following:

(*i*) The cause of the malfunction, if known.

(*ii*) The date, time, location, and duration of the malfunction.

(*iii*) The actions taken to correct and prevent the reoccurrence of the malfunction.

(*iv*) Actions taken to minimize emissions during the malfunction, if any.

(*v*) The type and, where known or where it is reasonably possible to estimate, the quantity of any excess emissions of air contaminants.

(*vi*) Contemporaneous operational logs and continuous emission monitoring information where continuous emission monitoring is required by the clean air act or rules promulgated under this part or is specified as a condition of a permit issued under this part or an order entered under this part.

(c) The malfunctioning source, process, or process equipment shall have been maintained and operated in a manner consistent with the applicable provisions of a malfunction abatement plan approved under this part, if any.

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(d) During start-up or shutdown, the source, process, or process equipment shall be operated in accordance with applicable start-up or shutdown provisions of its installation permit, nonrenewable permit to operate, or operating permit, if any.

(4) Notwithstanding the provisions of subsection (3), the department may take action under section 5518(1) to immediately discontinue and take action to contain an imminent and substantial endangerment to public health, safety, or welfare.

(5) Notwithstanding the provisions of subsection (3), enforcement action may be taken against a person who violates section 5531(4), (5), or (6).

(6) Subsections (3) to (5) do not apply upon the effective date of the general rules required under subsection (2) or November 13, 1996, whichever is first.

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

Compiler's note: The general rules referenced in subsection (6) were promulgated and became effective July 26, 1995.

Popular name: Act 451

Popular name: NREPA

324.5510 Denial or revocation of permit; circumstances.

Sec. 5510. In accordance with this part and rules promulgated under this part, the department may, after notice and opportunity for public hearing, deny or revoke a permit issued under this part if any of the following circumstances exist:

(a) Installation, modification, or operation of the source will violate this part, rules promulgated under this part, or the clean air act, unless the source is in compliance with a legally enforceable schedule of compliance contained in a permit or order.

(b) Installation, construction, reconstruction, relocation, alteration, or operation of the source presents or may present an imminent and substantial endangerment to human health, safety, or welfare, or the environment.

(c) The person applying for the permit makes a false representation or provides false information during the permit review process.

(d) The source has not been installed, constructed, reconstructed, relocated, altered, or operated in a manner consistent with the application for a permit or as specified in a permit.

(e) The person owning or operating the source fails to pay an air quality fee assessed under this part.

(f) The person proposes a major offset source or the owner or operator of a proposed major offset modification that owns or operates another source in the state that has the potential to emit 100 tons or more per year of any air contaminant regulated under the clean air act and that source is in violation of this part, rules promulgated under this part, the clean air act, or a permit or order issued under this part, unless the source is in compliance with a legally enforceable schedule of compliance contained in a permit or order.

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

Popular name: Act 451

Popular name: NREPA

324.5511 List of permit applications; list of consent order public notices; notice, opportunity for public comment and public hearing required for certain permit actions.

Sec. 5511. (1) The department shall establish and maintain a list of all applications for permits submitted pursuant to sections 5505 and 5506. The list shall report the status of each application. The information on the list shall be updated by the department on a monthly basis. The department shall send a copy of the pertinent sections of the list to the chairperson of the county board of commissioners of each county. Any other person may subscribe to this list on a countywide or statewide basis and shall reimburse the department for the costs of copying, handling, and mailing. The department shall make the list available at district offices selected by the department. The department may also develop an electronic data base that includes the capability of making this list available to the public. This list shall include all of the following information:

(a) The name of the permit applicant.

(b) The street address, if available, the county, and the municipality in which the source is located or proposed to be located.

(c) The type of application, such as installation, operation, renewal, or general permit.

(d) The date the permit application was received by the department.

(e) The date when the permit application is determined to be administratively complete, if applicable.

(f) A brief description of the source, process, or process equipment covered by the permit application.

(g) Brief pertinent comments regarding the progress of the permit application, including the dates of public

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comment periods and public hearings, if applicable.

(2) The department shall establish and maintain a list of all proposed consent order public notices. This information shall be updated by the department on a monthly basis. Any other person may subscribe to this list on a countywide or statewide basis and shall reimburse the department for the costs of copying, handling, and mailing. The department shall make the list available at district offices selected by the department. This list shall include all of the following information:

(a) The name of the parties to the proposed consent order.

(b) The street address, if available, and the county and municipality in which the source is located.

(c) A brief description of the source.

(d) A brief description of the alleged violation to be resolved by the proposed consent order.

(e) A brief description of the respondent's position regarding the alleged violation if the respondent requests such inclusion and supplies to the department a brief statement of the respondent's position regarding the alleged violation.

(3) The department shall not issue a permit to install or a nonrenewable permit to operate pursuant to section 5505 for a major source or for a major modification under title I of the clean air act, chapter 360, 77 Stat. 392, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515, or issue, renew, or significantly modify any operating permit issued under section 5506, or enter into a consent order, without providing public notice, including offering an opportunity for public comment and a public hearing on the draft permit or proposed consent order. In addition, the department shall not issue a permit for which there is a known public controversy without providing public notice including an opportunity for public comment and public meeting. For the purposes of an operating permit issued under section 5506, a significant modification does not include any modifications to a permit made pursuant to section 5506(4)(h), (i), (j), or (k). For a general permit issued pursuant to section 5505(4) or section 5506(16), public notice and opportunity for public comment and a public hearing shall only be provided before the base general permit is approved, not as individual sources apply for coverage under that general permit. Public notice and an opportunity for public comment and a public hearing as required under this section shall be provided as follows:

(a) Public notice shall be provided by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice, and by other means determined to be necessary by the department to assure adequate notice to the public. Notice shall also be provided to persons on a mailing list, developed by the department, including those persons who request in writing to be on that list, and to any other person who requests in writing to be notified of a permit action involving a specific source.

(b) The notice shall identify the source; the name and address of the responsible official; the mailing address of the department; the activity or activities involved in the proposed permit action or consent order; the emissions change involved in any significant permit modification; the name, address, and telephone number of a representative of the department from whom interested persons may obtain additional information, including copies of the draft permit or proposed consent order, the application, all relevant supporting material, and any other materials available to the department that are relevant to the permit or consent order decision; a brief description of the comment procedures required by this section; and the time and place of any hearing that may be held, including a statement of the procedures to request a hearing.

(c) The department shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(d) The department shall keep a record of the commenters and the issues raised during the public comment period and public hearing, if held, and these records shall be available to the public.

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

Popular name: Act 451

Popular name: NREPA

324.5512 Rules.

Sec. 5512. (1) Subject to section 5514, the department shall promulgate rules for purposes of doing all of the following:

(a) Controlling or prohibiting air pollution.

(b) Complying with the clean air act.

(c) Controlling any mode of transportation that is capable of causing or contributing to air pollution.

(d) Reviewing proposed locations of stationary emission sources.

(e) Reviewing modifications of existing emission sources.

(f) Prohibiting locations or modifications of emission sources that impair the state's ability to meet federal ambient air quality standards.

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(g) Establishing suitable emission standards consistent with federal ambient air quality standards and factors including, but not limited to, conditions of the terrain, wind velocities and directions, land usage of the region, and the anticipated characteristics and quantities of potential air pollution sources. This part does not prohibit the department from denying or revoking a permit to operate a source, process, or process equipment that would adversely affect human health or other conditions important to the life of the community.

(h) Implementing sections 5505 and 5506.

(2) Unless otherwise provided in this part, each rule, permit, or administrative order promulgated or issued under this part prior to November 13, 1993 shall remain in effect according to its terms unless the rule or order is inconsistent with this part or is revised, amended, or repealed.

(3) Section 11522 applies to open burning.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2012, Act 102, Imd. Eff. Apr. 19, 2012;—Am. 2014, Act 417, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 336.1101 et seq.; R 336.1122; and R 336.1201 et seq. of the Michigan Administrative Code.

324.5513 Car ferries and coal-fueled trains.

Sec. 5513. Notwithstanding any other provision of this part or the rules promulgated under this part, car ferries having the capacity to carry more than 110 motor vehicles and coal-fueled trains used in connection with tourism or an historical museum or carrying works of art or items of historical interest are not subject to regulation under this part.

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

Popular name: Act 451

Popular name: NREPA

324.5514 Department of environmental quality; prohibited acts; "wood heater" defined.

Sec. 5514. (1) The department of environmental quality shall not do any of the following:

(a) Promulgate a rule limiting emissions from wood heaters.

(b) Enforce against a manufacturer, distributor, or consumer a federal regulation limiting emissions from wood heaters and adopted after May 1, 2014.

(2) As used in this section, "wood heater" means a wood stove, pellet stove, wood-fired hydronic heater, wood burning forced-air furnace, or masonry wood heater designed for heating a home or business.

History: Add. 2014, Act 417, Eff. Mar. 31, 2015.

Compiler's note: Former MCL 324.5514, which pertained to disposal of United States flag by burning, was repealed by Act 102 of 2012, Imd. Eff. Apr. 19, 2012.

Popular name: Act 451

Popular name: NREPA

324.5515 Investigation; voluntary agreement; order; petition for contested case hearing; final order or determination; review.

Sec. 5515. (1) If the department believes that a person is violating this part, a rule promulgated under this part, a permit issued under this part, or a determination other than an order issued under this part, the department shall make a prompt investigation. If after this investigation the department finds that a violation of this part, a rule promulgated under this part, a permit issued under this part, or a determination other than an order issued under this part exists, the department shall attempt to enter into a voluntary agreement with the person.

(2) If the department believes that a person is violating an order issued under this part, the department shall make a prompt investigation. If after this investigation the department finds that a person has failed to comply with the terms of an order issued under this part, the department may attempt to enter into a voluntary agreement with the person.

(3) If a voluntary agreement is not entered into under subsection (1), the department may issue an order requiring a person to comply with this part, a rule promulgated under this part, a determination made under this part, or a permit issued under this part. If the department issues an order it shall be accompanied by a statement of the facts upon which the order is based.

(4) A person aggrieved by an order issued under subsection (3) may file a petition for a contested case hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. A petition shall be submitted to the department within 30 days of the effective date of the order. The department shall schedule the matter for hearing within

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30 days of receipt of the petition for a contested case hearing. A final order or determination of the department upon the matter following the hearing is conclusive, unless reviewed in accordance with Act No. 306 of the Public Acts of 1969, in the circuit court for the county of Ingham or for the county in which the person resides.

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

Popular name: Act 451

Popular name: NREPA

324.5516 Public hearing; information available to the public; use of confidential information.

Sec. 5516. (1) A public hearing with reference to pollution control may be held before the department. Persons designated to conduct the hearing shall be described as presiding officers and shall be disinterested and technically qualified persons.

(2) A copy of each permit, permit application, order, compliance plan and schedule of compliance, emissions or compliance monitoring report, sample analysis, compliance certification, or other report or information required under this part, rules promulgated under this part, or permits or orders issued under this part shall be available to the public to the extent provided by the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(3) A person whose activities are regulated under this part may designate a record or other information, or a portion of a record, permit application, or other information furnished to or obtained by the department or its agents, as being only for the confidential use of the department. The department shall notify the person asserting confidentiality of a request for public records under section 5 of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.235 of the Michigan Compiled Laws, the scope of which includes information that has been designated by the regulated person as being confidential. The person asserting confidentiality has 25 days after the receipt of the notice to demonstrate to the department that the information designated as confidential should not be disclosed because the information is a trade secret or secret process, or is production, commercial, or financial information the disclosure of which would jeopardize the competitive position of the person from whom the information was obtained, and make available information not otherwise publicly available. The department shall grant the request for the information unless the person regulated under this part demonstrates to the satisfaction of the department that the information should not be disclosed. If there is a dispute between the person asserting confidentiality and the person requesting information under Act No. 442 of the Public Acts of 1976, the department shall make the decision to grant or deny the request. After the department makes a decision to grant a request, the information requested shall not be released until 8 business days after the regulated person's receipt of notice of the department's decision. This does not prevent the use of the information by the department in compiling or publishing analyses or summaries relating to ambient air quality if the analyses or summaries do not identify the person or reveal information which is otherwise confidential under this section. This section does not render data on the quantity, composition, or quality of emissions from any source confidential. Data on the amount and nature of air contaminants emitted from a source shall be available to the public.

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

Popular name: Act 451

Popular name: NREPA

324.5517 Petition for relief from rule.

Sec. 5517. Application for relief from a rule promulgated by the department shall be made by petition to the circuit court for the county of Ingham or for the county in which the petitioner resides. The petition shall be verified as in a civil action. Each petition shall contain a plain and concise statement of the material facts on which the petitioner relies, shall set forth the rule or part of the rule that the petitioner claims is unreasonable or prejudicial to the petitioner, and shall specify the grounds for the claim. The petition may be accompanied by affidavits or other written proof and shall demand the relief to which the petitioner alleges he or she is entitled, in the alternative or otherwise. The petition may be made by 1 or more persons, jointly or severally, who are aggrieved by a rule, whether or not the petitioner is or was a party to the proceeding in which the rule was promulgated by the department.

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

Popular name: Act 451

Popular name: NREPA

324.5518 Notice to discontinue pollution; hearing; suit brought by attorney general in circuit court; effectiveness and duration of order; notice to county emergency management

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coordinator.

Sec. 5518. (1) If the department finds that a person is discharging or causing to be discharged into the atmosphere, directly or indirectly, an air contaminant and the discharge constitutes an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment, and it appears to be prejudicial to the interests of the people of the state to delay action, the department shall notify the person by written notice that he or she must immediately discontinue the air pollution or take such other action as may be necessary to contain the imminent and substantial endangerment, or both. The written notice shall specify the facts that are the basis of the allegation. Within 7 days, the department shall provide the person the opportunity to be heard and to present any proof that the discharge does not constitute an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment.

(2) Notwithstanding any other provision of this part, upon receipt of evidence that a person is discharging or causing to be discharged into the atmosphere, directly or indirectly, an air contaminant and the discharge constitutes an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment, and it appears to be prejudicial to the interests of the people of the state to delay action, the attorney general may bring suit on behalf of the state in the appropriate circuit court to immediately discontinue the air pollution or take such other action as may be necessary to contain the imminent and substantial endangerment, or both.

(3) An order issued by the department under subsection (1) is effective upon issuance and shall remain in effect for a period of not more than 7 days, unless the attorney general brings a civil action to restrain the alleged endangerment pursuant to subsection (2) or section 5530 before the expiration of that period. If the attorney general brings such an action within the 7-day period, the order issued by the department shall remain in effect for an additional 7 days or such other period as is authorized by the court in which the action is brought.

(4) Prior to taking an action under subsection (1), the department shall attempt to notify the emergency management coordinator for the county in which the source is located who is appointed pursuant to the emergency management act, Act No. 390 of the Public Acts of 1976, being sections 30.401 to 30.420 of the Michigan Compiled Laws.

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

Popular name: Act 451

Popular name: NREPA

324.5519, 324.5520 Repealed. 1998, Act 245, Imd. Eff. July 8, 1998.

Compiler's note: The repealed sections pertained to submission of emissions information to the department and payment of emission fees.

Popular name: Act 451

Popular name: NREPA

324.5521 Emissions control fund.

Sec. 5521. (1) The emissions control fund is created within the state treasury. The state treasurer may receive money from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

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

(3) Upon the expenditure or appropriation of funds raised through fees in this part for any purpose other than those specifically listed in this part, authorization to collect fees under this part is suspended until such time as the funds expended or appropriated for purposes other than those listed in this part are returned to the emissions control fund.

(4) Beginning October 1, 1994 and thereafter money shall be expended from the fund, upon appropriation, only for the following purposes as they relate to implementing the operating permit program required by title V:

(a) Preparing generally applicable rules or guidance regarding the operating permit program or its implementation or enforcement.

(b) Reviewing and acting on any application for a permit, permit revision, or permit renewal, the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal.

(c) General administrative costs of running the operating permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry.

(d) Implementing and enforcing the terms of any operating permit, not including any court costs or other costs associated with an enforcement action.

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(e) Emissions and ambient monitoring.

(f) Modeling, analysis, or demonstration.

(g) Preparing inventories and tracking emissions.

(h) Providing direct and indirect support to facilities under the small business clean air assistance program created in part 57.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 245, Imd. Eff. July 8, 1998.

Popular name: Act 451

Popular name: NREPA

****** 324.5522 THIS SECTION MAY NOT APPLY: See subsection (11) ******

324.5522 Fee-subject facility; air quality fees; calculation of facility emissions for previous year; annual report detailing activities of previous fiscal year; action by attorney general for collection of fees; applicability of section; condition; "electric provider" defined.

Sec. 5522. (1) Until October 1, 2019, the owner or operator of each fee-subject facility shall pay air quality fees as required and calculated under this section. The department may levy and collect an annual air quality fee from the owner or operator of each fee-subject facility in this state. The legislature intends that the fees required under this section meet the minimum requirements of the clean air act and that this expressly stated fee system serve as a limitation on the amount of fees imposed under this part on the owners or operators of fee-subject facilities in this state.

(2) The annual air quality fee shall be calculated for each fee-subject facility, according to the following procedure:

(a) Except as provided in subdivision (d), for category I facilities, the annual air quality fee shall be the sum of a facility charge of $5,250.00 and an emissions charge as specified in subdivision (e) or (f).

(b) For category II facilities, the annual air quality fee shall be the sum of a facility charge of $1,795.00 and an emissions charge as specified in subdivision (e) or (f).

(c) For category III facilities, the annual air quality fee shall be $250.00.

(d) For municipal electric generating facilities that are category I facilities and that emit more than 730 tons of fee-subject air pollutants, the annual air quality fee shall be the following amount, based on the number of tons of fee-subject air pollutants emitted:

(*i*) For more than 730 tons but less than 5,000 tons, an annual fee of $41,830.00.

(*ii*) For 5,000 tons or more, an annual fee equal to the sum of a facility charge of $5,250.00 and an emissions charge as specified in subdivision (e).

(e) The emissions charge for category I facilities that are electric providers and that are not covered by subdivision (d) and for category II facilities that are electric providers shall equal the emission charge rate multiplied by the actual tons of fee-subject air pollutants emitted. The emission charge rate for fee-subject air pollutants shall be $51.15. A pollutant that qualifies as a fee-subject air pollutant under more than 1 class shall be charged only once. The actual tons of fee-subject air pollutants emitted shall be considered to be the sum of all fee-subject air pollutants emitted at the fee-subject facility for the calendar year 2 years preceding the year of billing, but not more than the lesser of the following:

(*i*) 6,100 tons.

(*ii*) 1,500 tons per pollutant, if the sum of all fee-subject air pollutants except carbon monoxide emitted at the fee-subject facility is less than 6,100 tons.

(f) The emissions charge for category I or category II facilities that are not electric providers shall be calculated in the same manner as provided in subdivision (e). However, the actual tons of fee-subject air pollutants emitted shall be considered to be the sum of all fee-subject air pollutants emitted at a fee-subject facility for the calendar year 2 years preceding the year of billing, but not more than the lesser of the following:

(*i*) 4,500 tons.

(*ii*) 1,250 tons per pollutant, if the sum of all fee-subject air pollutants except carbon monoxide emitted at the fee-subject facility is less than 4,500 tons.

(3) After January 1, but before January 15 of each year, the department shall notify the owner or operator of each fee-subject facility of its assessed annual air quality fee. Payment is due within 90 calendar days of the mailing date of the air quality fee notification. If an assessed fee is challenged under subsection (5), payment is due within 90 calendar days of the mailing date of the air quality fee notification or within 30 days of receipt of a revised fee or statement supporting the original fee, whichever is later. However, to combine fee assessments, the department may adjust the billing date and due date under this subsection for category III facilities that are dry cleaning facilities also subject to the licensing or certification requirements of section

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13305 of the public health code, 1978 PA 368, MCL 333.13305, and section 5i of the fire prevention code, 1941 PA 207, MCL 29.5i. The department shall deposit all fees collected under this section to the credit of the fund.

(4) If the owner or operator of a fee-subject facility fails to submit the amount due within the time period specified in subsection (3), the department shall assess the owner or operator a penalty of 5% of the amount of the unpaid fee for each month that the payment is overdue up to a maximum penalty of 25% of the total fee owed. However, to combine fee assessments, the department may waive the penalty under this subsection for dry cleaning facilities described in subsection (3).

(5) To challenge its assessed fee, the owner or operator of a fee-subject facility shall submit the challenge in writing to the department. The department shall not process the challenge unless it is received by the department within 45 calendar days of the mailing date of the air quality fee notification described in subsection (3). A challenge shall identify the facility and state the grounds upon which the challenge is based. Within 30 calendar days of receipt of the challenge, the department shall determine the validity of the challenge and provide the owner with notification of a revised fee or a statement setting forth the reason or reasons why the fee was not revised. Payment of the challenged or revised fee is due within the time frame described in subsection (3). If the owner or operator of a facility desires to further challenge its assessed fee, the owner or operator of the facility has an opportunity for a contested case hearing as provided for under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(6) If requested by the department, by March 15 of each year, or within 45 days of a request by the department, whichever is later, the owner or operator of each fee-subject facility shall submit information regarding the facility's previous year's emissions to the department. The information shall be sufficient for the department to calculate the facility's emissions for that year and meet the requirements of 40 CFR 51.320 to 51.327.

(7) By July 1 of each year, the department shall provide the owner or operator of each fee-subject facility required to pay an emission charge pursuant to this section with a copy of the department's calculation of the facility emissions for the previous year. Within 60 days of this notification, the owner or operator of the facility may provide corrections to the department. The department shall make a final determination of the emissions by December 15 of that year. If the owner or operator disagrees with the determination of the department, the owner or operator may request a contested case hearing as provided for under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(8) By March 1 annually, the department shall prepare and submit to the governor, the legislature, the chairpersons of the standing committees of the senate and house of representatives with primary responsibility for environmental protection issues related to air quality, and the chairpersons of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the department's activities of the previous fiscal year funded by the fund. This report shall include, at a minimum, all of the following as it relates to the department:

(a) The number of full-time equated positions performing title V and non-title V air quality enforcement, compliance, or permitting activities.

(b) All of the following information related to the permit to install program authorized under section 5505:

(*i*) The number of permit to install applications received by the department.

(*ii*) The number of permit to install applications for which a final action was taken by the department. The number of final actions shall be reported as the number of applications approved, the number of applications denied, and the number of applications withdrawn by the applicant.

(*iii*) The number of permits to install approved that were required to complete public participation under section 5511(3) before final action and the number of permits to install approved that were not required to complete public participation under section 5511(3) prior to final action.

(*iv*) The average number of final permit actions per permit to install reviewer full-time equivalent position.

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

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

(*vii*) The percentage and number of permit to install applications for which a final action was taken by the department within 180 days of receipt for those applications not required to complete public participation under section 5511(3) prior to final action, or within 240 days of receipt for those applications which are required to complete public participation under section 5511(3) prior to final action.

(*viii*) The percentage and number of permit to install applications for which a processing period extension was requested and granted.

(c) All of the following information for the renewable operating permit program authorized under section

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5506:

(*i*) The number of renewable operating permit applications received by the department.

(*ii*) The number of renewable operating permit applications for which a final action was taken by the department. The number of final actions shall be reported as the number of applications approved, the number of applications denied, and the number of applications withdrawn by the applicant.

(*iii*) The percentage and number of initial permit applications processed within the required time.

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

(*v*) The number of permit applications reopened by the department.

(*vi*) The number of general permits issued by the department.

(d) The number of letters of violation sent.

(e) The amount of penalties collected from all consent orders and judgments.

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

(g) The number of inspections done on sources required to obtain a permit under section 5506 and the number of inspections of other sources.

(h) The number of air pollution complaints received, investigated, not resolved, and resolved by the department.

(i) The number of contested case hearings and civil actions initiated and completed, and the number of voluntary consent orders, administrative penalty orders, and emergency orders entered or issued, for sources required to obtain a permit under section 5506.

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

(9) The report under subsection (8) shall also include the amount of revenue for programs under this part received during the prior fiscal year from fees, from federal funds, and from general fund appropriations. Each of these amounts shall be expressed as a dollar amount and as a percent of the total annual cost of programs under this part.

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

(11) This section does not apply if the administrator of the United States Environmental Protection Agency determines that the department is not adequately administering or enforcing the renewable operating permit program and the administrator promulgates and administers a renewable operating permit program for this state.

(12) As used in this section, "electric provider" means that term as defined in section 5 of the clean, renewable, and efficient energy act, 2008 PA 295, MCL 460.1005.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 245, Imd. Eff. July 8, 1998;—Am. 2001, Act 49, Imd. Eff. July 23, 2001;—Am. 2005, Act 169, Imd. Eff. Oct. 10, 2005;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007;—Am. 2011, Act 164, Imd. Eff. Oct. 4, 2011;—Am. 2015, Act 60, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.5523 Issuance of permits and administration and enforcement of part, rules, and state implementation plan; delegation granted by department to certain counties.

Sec. 5523. (1) A county in which a city with a population of 750,000 or more is located may apply for a delegation from the department to issue state permits and administer and enforce the applicable provisions of this part, rules promulgated under this part, the clean air act, and the state implementation plan. After a public hearing, the department shall grant the delegation if the department finds that the county's application demonstrates all of the following:

(a) That the county program complies with the applicable provisions of this part, the rules promulgated under this part, the clean air act, and the state implementation plan.

(b) That the county has, and will continue to have, the capacity to carry out the applicable provisions of this part, rules promulgated under this part, the clean air act, and the state implementation plan including, but not limited to, adequate and qualified staff to do all of the following:

(*i*) Monitor ambient air at locations specified by the department using equipment and procedures specified by the department.

(*ii*) Process and review applications for installation permits, operating permits, tax exemptions, and construction waivers pursuant to sections 5505 and 5506, part 59, and the clean air act, demonstrating a thorough knowledge of permit applicability, procedures, and regulations by developing permits that are free of significant errors and inaccuracies as defined in the performance standards section of the annual contract between the department and participating counties.

(*iii*) Perform necessary sampling and laboratory analyses.

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(*iv*) Conduct regular and complete inspections and record reviews of all significant sources of air pollution.

(*v*) Respond to citizen complaints related to air pollution.

(*vi*) Notify sources of identified violations of applicable provisions of this part, rules promulgated under this part, the clean air act, and the state implementation plan and conduct appropriate enforcement, up to and including administrative, civil, and criminal enforcement.

(*vii*) Perform dispersion modeling analyses, collect emissions release information, and develop necessary state implementation plan demonstrations.

(*viii*) Carry out other activities required by this part, rules promulgated under this part, the clean air act, and the state implementation plan.

(c) That the county has adequate funding to carry out the applicable provisions of this part, rules promulgated under this part, the clean air act, and the state implementation plan. This shall include identification of funding from air quality fees and any federal, state, or county funds along with an identification of the activities that are funded by each funding source. The county funding shall be sufficient to provide the required grantee match for any federal air pollution grant.

(d) That the county has performed in accordance with the terms of the most recent contract, if any, between the state and the county that describes the work activities and program to be carried out by the county. This shall be demonstrated through state audit reports and the county's prompt and permanent correction of any deficiencies identified in state audit reports.

(e) That the county program contains provisions for public notice and public participation consistent with this part, the rules promulgated under this part, and the clean air act.

(f) That the county has the capacity to administer the state air quality fee program in the manner prescribed in section 5522 for all fee-subject facilities subject to this part, located within the county, and subject to the delegated program of the county. This shall include an ability to identify fee-subject facilities, calculate and assess fees, implement collections, maintain a dedicated account, and process fee challenges.

(2) A delegation under this section shall be for a term of not more than 5 years and not less than 2 years, and may be renewed by the department. The delegation shall be in the form of a written contract that does all of the following:

(a) Describes the activities the county shall carry out during the term of the delegation.

(b) Provides for the delegated program to be consistent with implementation of the state's air program, using state procedures, forms, databases, and other means.

(c) Provides for ongoing communication between the county and state to assure consistency under subdivision (b).

(3) One hundred eighty days prior to the expiration of the term of delegation, the county may submit an application to the department for renewal of their delegation of authority. The department shall hold a public hearing and following the public hearing make its decision on a renewal of delegation at least 60 days prior to the expiration of the term of the delegation. The department shall deny the renewal of a delegation of authority upon a finding that the county no longer meets the criteria described in subsection (1) or provisions of the delegation contract. The county may appeal a finding under subsection (1) or this subsection to a court of competent jurisdiction.

(4) A county delegated authority under this section annually shall submit a report to the department that documents the county's ability to meet the criteria described in subsection (1) and the delegation contract during the past 12 months.

(5) In addition to the report of the county under subsection (4), the auditor general of the state shall annually submit to the governor, the legislature, and the department an independent report regarding whether a county meets the criteria provided in subsection (1) and a review of the fiscal integrity of a county delegated authority under this section. The auditor general's report shall also determine the county's pro rata share of the state's support services for title V programs that are attributable to and payable by a county.

(6) Within 60 days after a county delegated authority under this section submits its annual report as required under subsection (4), the department shall notify the county, in writing, whether the report of the county meets the requirements of this section or states, with particularity, the deficiencies in that report or any findings in the auditor general's report that render the county in noncompliance with the criteria in subsection (1). The county shall have 90 days to correct any stated deficiencies. If the department finds that the deficiencies have not been corrected by the county, the department shall notify the county, in writing, within 30 days of the submission of the county's corrections and may terminate a county's delegation. The county shall have 21 days from receipt of the decision of termination in which to appeal the department's decision to a court of competent jurisdiction. If the department fails to notify the county within 60 days, the report shall be considered satisfactory for the purposes of this subsection.

(7) Notwithstanding any other statutory provision, rule, or ordinance, a county delegated authority under

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this section to administer and enforce this part shall issue state permits and implement its responsibilities only in accordance with its delegation, the delegation contract, this part, rules promulgated under this part, the clean air act, and the applicable provisions of the state implementation plan. State permits issued by a county that is delegated authority under this section have the same force and effect as permits issued by the department, and if such a county issues a state permit pursuant to section 5505 or 5506, no other state or county permit is required pursuant to section 5505 or 5506, respectively.

(8) Upon receipt of a permit application, prior to taking final action to issue a state permit or entering into a consent order, the county shall transmit to the department a copy of each administratively complete permit application, application for a permit modification or renewal, proposed permit, or proposed consent order. The county shall transmit to the department a copy of each state permit issued by the county and consent order entered within 30 days of issuance of the state permit or entry of the consent order.

(9) Notwithstanding a delegation under this part, the department retains the authority to bring any appropriate enforcement action under sections 5515, 5516, 5518, 5526, 5527, 5528, 5529, 5530, 5531, and 5532 as authorized under this part and the rules promulgated under this part to enforce this part and the rules promulgated under this part. The department may bring any appropriate action to enforce a state permit issued or a consent order entered into by a county to which authority is delegated.

(10) Notwithstanding any other provision of this part, in a county that has been delegated authority under this section, that county shall impose and collect fees in the manner prescribed in section 5522 on all fee-subject facilities subject to this part and located within the corporate boundaries and subject to the delegated program of the county. The department shall not levy or collect an annual air quality fee from the owner or operator of a fee-subject facility who pays fees pursuant to this section. A county that is delegated authority under this section shall not assess a fee for a program or service other than as provided for in this part or title V or assess a fee covered by this part or title V greater than the fees set forth in section 5522. A county that is delegated authority under this section shall pay to the state the pro rata share of the state's support services for title V programs attributable to the county.

(11) Fees imposed and collected by a county with delegated authority under this section shall be paid to the county treasury.

(12) The county treasurer of a county delegated authority under this section shall create a clean air implementation account in the county treasury, and the county treasurer shall deposit all fees received pursuant to the delegation authorized under this section in the account. The fees shall be expended only in accordance with section 5521(6), the rules promulgated under this part, and the clean air act.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 245, Imd. Eff. July 8, 1998.

Popular name: Act 451

Popular name: NREPA

324.5524 Fugitive dust sources or emissions.

Sec. 5524. (1) The provisions of this section, including subsection (2), shall apply to any fugitive dust source at all mining operations, standard industrial classification major groups 10 through 14; manufacturing operations, standard industrial classification major groups 20 through 39; railroad transportation, standard industrial classification major group 40; motor freight transportation and warehousing, standard industrial classification major group 42; electric services, standard industrial classification group 491; sanitary services, standard industrial classification group 495; and steam supply, standard industrial classification group 496, which are located in areas listed in table 36 of R 336.1371 of the Michigan administrative code.

(2) Except as provided in subsection (8), a person responsible for any fugitive dust source regulated under this section shall not cause or allow the emission of fugitive dust from any road, lot, or storage pile, including any material handling activity at a storage pile, that has an opacity greater than 5% as determined by reference test method 9d. Except as otherwise provided in subsection (8) or this section, a person shall not cause or allow the emission of fugitive dust from any other fugitive dust source that has an opacity greater than 20% as determined by test method 9d. The provisions of this subsection shall not apply to storage pile material handling activities when wind speeds are in excess of 25 miles per hour (40.2 kilometers per hour).

(3) In addition to the requirements of subsection (2), and except as provided in subdivisions (e), (f), and (g), a person shall control fugitive dust emissions in a manner that results in compliance with all of the following provisions:

(a) Potential fugitive dust sources shall be maintained and operated so as to comply with all of the following applicable provisions:

(*i*) All storage piles of materials, where the total uncontrolled emissions of fugitive dust from all such piles at a facility is in excess of 50 tons per year and where such piles are located within a facility with potential

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particulate emissions from all sources including fugitive dust sources and all other sources exceeding 100 tons per year, shall be protected by a cover or enclosure or sprayed with water or a surfactant solution, or treated by an equivalent method, in accordance with the operating program required by subsection (4).

(*ii*) All conveyor loading operations to storage piles specified in subparagraph (*i*) shall utilize spray systems, telescopic chutes, stone ladders, or other equivalent methods in accordance with the operating program required by subsection (4). Batch loading operations to storage piles specified in subparagraph (*i*) shall utilize spray systems, limited drop heights, enclosures, or other equivalent methods in accordance with the operating program required by subsection (4). Unloading operations from storage piles specified in subparagraph (*i*) shall utilize rake reclaimers, bucket wheel reclaimers, under-pile conveying, pneumatic conveying with baghouse, water sprays, gravity-feed plow reclaimer, front-end loaders with limited drop heights, or other equivalent methods in accordance with the operating program required by subsection (4).

(*iii*) All traffic pattern access areas surrounding storage piles specified in subparagraph (*i*) and all traffic pattern roads and parking facilities shall be paved or treated with water, oils, or chemical dust suppressants. All paved areas, including traffic pattern access areas surrounding storage piles specified in subparagraph (*i*), shall be cleaned in accordance with the operating program required by subsection (4). All areas treated with water, oils, or chemical dust suppressants shall have the treatment applied in accordance with the operating program required by subsection (4).

(*iv*) All unloading and transporting operations of materials collected by pollution control equipment shall be enclosed or shall utilize spraying, pelletizing, screw conveying, or other equivalent methods.

(*v*) Crushers, grinding mills, screening operations, bucket elevators, conveyor transfer points, conveyor bagging operations, storage bins, and fine product truck and railcar loading operations shall be sprayed with water or a surfactant solution, utilize choke-feeding, or be treated by an equivalent method in accordance with an operating program required under subsection (4). This subparagraph shall not apply to high-lines at steel mills.

(b) If particulate collection equipment is operated pursuant to this section, emissions from such equipment shall not exceed 0.03 grains per dry standard cubic foot (0.07 grams per cubic meter).

(c) A person shall not cause or allow the operation of a vehicle for the transporting of bulk materials with a silt content of more than 1% without employing 1 or more of the following control methods:

(*i*) The use of completely enclosed trucks, tarps, or other covers for bulk materials with a silt content of 20% or more by weight.

(*ii*) The use of tarps, chemical dust suppressants, or water in sufficient quantity to maintain the surface in a wet condition for bulk materials with a silt content of more than 5% but less than 20%.

(*iii*) Loading trucks so that no part of the load making contact with any sideboard, side panel, or rear part of the load comes within 6 inches of the top part of the enclosure for bulk materials with a silt content of more than 1% but not more than 5%.

(d) All vehicles for transporting bulk materials off-site shall be maintained in such a way as to prevent leakage or spillage and shall comply with the requirements of section 720 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.720 of the Michigan Compiled Laws, and with R 28.1457 of the Michigan administrative code.

(e) The provisions of subdivisions (c) and (d) do not apply to vehicles with less than a 2-ton capacity that are used to transport sand, gravel, stones, peat, or topsoil.

(f) The provisions of subdivision (c)(*i*) and (*ii*) do not apply to fly ash which has been thoroughly wetted and has the property of forming a stable crust upon drying.

(g) The provisions of subdivision (c) do not apply to the transportation of iron or steel slag if the vehicles do not leave the facility and the slag has a temperature of 200 degrees fahrenheit or greater.

(4) All fugitive dust sources subject to the provisions of this section shall be operated in compliance with both the provisions of an operating program that shall be prepared by the owner or operator of the source and submitted to the department and with applicable provisions of this section. Such operating program shall be designed to significantly reduce the fugitive dust emissions to the lowest level that a particular source is capable of achieving by the application of control technology that is reasonably available, considering technological and economic feasibility. The operating program shall be implemented with the approval of the department.

(5) The operating program required by subsection (4) is subject to review and approval or disapproval by the department and shall be considered approved if not acted on by the department within 90 days of submittal. All programs approved by the department shall become a part of a legally enforceable order or as part of an approved permit to install or operate. At a minimum, the operating program shall include all of the following:

(a) The name and address of the facility.

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(b) The name and address of the owner or operator responsible for implementation of the operating program.

(c) A map or diagram of the facility showing all of the following:

(*i*) Approximate locations of storage piles.

(*ii*) Conveyor loading operations.

(*iii*) All traffic patterns within the facility.

(d) The location of unloading and transporting operations with pollution control equipment.

(e) A detailed description of the best management practices utilized to achieve compliance with this section, including an engineering specification of particulate collection equipment, application systems for water, oil, chemicals, and dust suppressants utilized, and equivalent methods utilized.

(f) A test procedure, including record keeping, for testing all waste or recycled oils used for fugitive dust control for toxic contaminants.

(g) The frequency of application, application rates, and dilution rates if applicable, of dust suppressants by location of materials.

(h) The frequency of cleaning paved traffic pattern roads and parking facilities.

(i) Other information as may be necessary to facilitate the department's review of the operating program.

(6) Except for fugitive dust sources operating programs approved by the department pursuant to R 336.1373 of the Michigan administrative code between April 23, 1985 and May 12, 1987, the owner or operator of a source shall submit the operating program required by subsection (4) to the department by August 12, 1987.

(7) The operating program required by subsection (4) shall be amended by the owner or operator so that the operating program is current and reflects any significant change in the fugitive dust source or fugitive dust emissions. An amendment to an operating program shall be consistent with the requirements of this section and shall be submitted to the department for its review and approval or disapproval.

(8) Upon request by the owner or operator of a fugitive dust source, the department may establish alternate provisions to those specified in this section, if all of the following conditions are met:

(a) The fugitive dust emitting process, operation, or activity is subject to either of the following:

(*i*) The opacity limits of subsection (2).

(*ii*) The spray requirements of subsection (3)(a)(*i*) to (*v*).

(b) An alternate provision shall not be established by the department unless the department is reasonably convinced of all of the following:

(*i*) That a fugitive dust emitting process, operation, or activity subject to the alternate provisions is in compliance or on a legally enforceable schedule of compliance with the other rules of the department.

(*ii*) That compliance with the provisions of this section is not technically or economically reasonable.

(*iii*) That reasonable measures to reduce fugitive emissions as required by this section have been implemented in accordance with or will be implemented in accordance with a schedule approved by the department.

(9) Any alternate provisions approved by the department pursuant to subsection (8) shall be submitted to the United States environmental protection agency as an amendment to the state implementation plan.

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

Popular name: Act 451

Popular name: NREPA

324.5525 Definitions.

Sec. 5525. As used in section 5524:

(a) “Control equipment or pollution control equipment” has the meaning ascribed to control equipment in R 336.1103 of the Michigan administrative code.

(b) “Fine product” means materials which will pass through a 20-mesh screen or those particles with aerodynamic diameters of 830 microns or less.

(c) “Fugitive dust” has the meaning ascribed to it in R 336.1106 of the Michigan administrative code.

(d) “Fugitive dust source” means any fugitive dust emitting process, operation, or activity regulated under section 5524.

(e) “Opacity” has the meaning ascribed to it in R 336.1115 of the Michigan administrative code.

(f) “Particulate” means any air contaminant existing as a finely divided liquid or solid, other than uncombined water, as measured by a reference test specified in subsection (5) of R 336.2004 of the Michigan administrative code or by an equivalent or alternative method.

(g) “Potential particulate emissions” means those emissions of particulate matter expected to occur without control equipment, unless such control equipment is, aside from air pollution control requirements, vital to the

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production of the normal product of the source or to its normal operation. Annual potential particulate emissions shall be based on the maximum annual-rated capacity of the source, unless the source is subject to enforceable permit conditions or enforceable orders which limit the operating rate or the hours of operation or both. Enforceable agreements or permit conditions on the type or amount of materials combusted or processed shall be used in determining the potential particulate emission rate of a source.

(h) "Process" or "process equipment" has the meaning ascribed to it in R 336.1116 of the Michigan administrative code.

(i) "Silt content" means that portion, by weight, of a particulate material which will pass through a number 200 (75 micron) wire sieve as determined by the American society of testing material, test C-136-76.

(j) "Test method 9D" means the method by which visible emissions of fugitive dust shall be determined according to test method 9 as set forth in appendix A-reference methods in 40 CFR, part 60, with the following modifications:

(*i*) The data reduction provisions of section 2.5 of method 9 shall be based on an average of 12 consecutive readings recorded at 15-second intervals.

(*ii*) For roadways and parking lots, opacity observations shall be made from a position such that the observer's line of vision is approximately perpendicular to the plume direction and approximately 4 feet directly above the surface of the road or parking area from which the emissions are being generated. The observer shall not look continuously at the plume, but instead shall observe the plume momentarily at 15-second intervals at the point of maximum plume density. Consecutive readings must be suspended for any 15-second period if a vehicle is in the observer's line of sight. If this occurs, a "V" shall be used in lieu of a numerical value, and a footnote shall be made to indicate that "V" signifies that the observer's view was obstructed by a vehicle. Readings shall continue at the next 15-second period, and they shall be considered consecutive to the reading immediately preceding the 15-second period denoted by a "V". Consecutive readings also shall be suspended for any 15-second period if a vehicle passes through the area traveling in the opposite direction and creates a plume that is intermixed with the plume being read. If this occurs, an "I" shall be used in lieu of a numerical value, and a footnote shall be made to indicate that "I" signifies that the readings were terminated due to interference from intermixed plumes. Readings shall continue when, in the judgment of the observer, the plume created by the vehicle traveling in the opposite direction no longer interferes with the plume originally being read; and they shall be considered consecutive to the reading immediately preceding the 15-second period denoted by an "I". Intermixing of plumes from vehicles traveling in the same direction represents the road conditions, and reading shall continue in the prescribed manner. A reading encompassing an unusual condition (such as a broken bag of cement on the pavement) cannot be used to represent the entire surface condition involved. In such cases, another set of readings, encompassing the average surface condition, must be conducted. For all other fugitive dust sources except roadways and parking lots, opacity observations shall be made from a position that provides the observer a clear view of the source and the fugitive dust with the sun behind the observer. A position at least 15 feet from the source is recommended. To the extent possible, the line of sight should be approximately perpendicular to the flow of fugitive dust and to the longer axis of the emissions. Opacity observations shall be made for the point of highest opacity within the fugitive dust. Since the highest opacity usually occurs immediately above or downwind of the source, the observer should normally concentrate on the area or areas of the plume close to the source.

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

Popular name: Act 451

Popular name: NREPA

324.5526 Investigation; inspection; furnishing duplicate of analytical report; powers of department or authorized representative; entry or access to records refused; powers of attorney general; "authorized representative" defined.

Sec. 5526. (1) The department may, upon the presentation of credentials and other documents as may be required by law, and upon stating the authority and purpose of the investigation, enter and inspect any property at reasonable times for the purpose of investigating either an actual or suspected source of air pollution or ascertaining compliance or noncompliance with this part, rules promulgated under this part, the clean air act, a permit issued under this part, or any determination or order issued under this part. If in connection with an investigation or inspection, samples of air contaminants are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person who is suspected of causing the air pollution. In implementing this subsection, the department or its authorized representative may do any of the following:

(a) Have access to and copy, at reasonable times, any records that are required to be maintained pursuant to

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this part, rules promulgated under this part, the clean air act, a permit issued under this part, or any determination or order issued under this part.

(b) Inspect at reasonable times any facility, equipment, including monitoring and air pollution control equipment, practices, or operations regulated or required under this part, rules promulgated under this part, the clean air act, a permit issued under this part, or any determination or order issued under this part.

(c) Sample or monitor at reasonable times substances or parameters for the purpose of determining compliance with this part, rules promulgated under this part, the clean air act, a permit issued under this part, or any determination or order issued under this part. The department may enter into a contract with a person to sample and monitor as authorized under this subdivision.

(2) If the department, or an authorized representative of the department, is refused entry or access to records and samples under subsection (1) for the purposes of utilizing this section, the attorney general, on behalf of the state, may do either of the following:

(a) Petition the court of appropriate jurisdiction for a warrant authorizing entry or access to records and samples pursuant to this section.

(b) Commence a civil action to compel compliance with a request for entry and access to records and samples pursuant to this section, to authorize entry and access to records and samples provided for in this section, and to enjoin interference with the utilization of this section.

(3) As used in this section, "authorized representative" means any of the following:

(a) A full- or part-time employee of the department of natural resources or other state department or agency to which the department delegates certain duties under this section.

(b) A county to which authority is delegated under section 5523.

(c) For the purpose of utilizing the powers conferred in subsection (1)(c), a contractor retained by the state or a county to which authority is delegated under section 5523.

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

Popular name: Act 451

Popular name: NREPA

324.5527 Emergency; definition; affirmative defense; burden of proof.

Sec. 5527. (1) As used in this section, "emergency" means a situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, war, strike, riot, catastrophe, or other condition as to which negligence on the part of the person was not the proximate cause, that requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation contained in an operating permit issued pursuant to section 5506, a permit to install or permit to operate issued pursuant to section 5505, or any rule promulgated under this part due to unavoidable increases in emissions attributable to the situation. An emergency does not include acts of noncompliance caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) An emergency constitutes an affirmative defense to an action brought for noncompliance with a technology-based emission limitation contained in an operating permit issued pursuant to section 5506, a permit to install or permit to operate issued pursuant to section 5505, or any rule promulgated under this part if the emergency is demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that establishes all of the following:

(a) An emergency occurred and that the defendant can identify the cause or causes of the emergency.

(b) The source was properly operated at the time of the emergency.

(c) During the emergency the defendant took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit.

(d) The defendant submitted notice of the emergency to the department within 2 working days after the emission limitation was exceeded due to the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(3) In any enforcement proceeding, the defendant seeking to establish the occurrence of an emergency has the burden of proof.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2000, Act 474, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.5528 Violation of part, rule, terms of permit, or order; agreement to correct violation; consent order; public notice and opportunity for public comment; providing copy of

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proposed consent order.

Sec. 5528. (1) If the department believes that a violation of this part or a rule promulgated under this part exists, or a violation of the terms of a permit issued under this part exists, the department shall provide the person responsible for the alleged violation with the opportunity to enter into an agreement with the department to correct the alleged violation. The agreement may provide for monetary or other relief as agreed upon by the parties. The agreement shall be in the form of a consent order and shall provide for compliance with this part and rules promulgated under this part and compliance with any applicable permit issued under this part. In addition, each consent order shall contain a compliance schedule that provides for reasonable progress toward full compliance by a designated date.

(2) If the department believes that a violation of an order issued under this part exists, the department may provide the person responsible for the alleged violation with the opportunity to enter into an agreement with the department to correct the alleged violation. The agreement may provide for monetary or other relief as agreed upon by the parties. The agreement shall be in the form of a consent order and shall provide for compliance with this part and rules promulgated under this part and compliance with any applicable permit or order issued under this part. In addition, each consent order shall contain a compliance schedule that provides for reasonable progress toward full compliance by a designated date.

(3) The department shall provide public notice and an opportunity for public comment on the terms and conditions of a consent order. Upon the request of any person the department shall provide a copy of the proposed consent order.

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

Popular name: Act 451

Popular name: NREPA

324.5529 Administrative fine; limitation; petition for review of fine.

Sec. 5529. (1) The department may assess an administrative fine of up to $10,000.00 for each instance of violation and, if the violation continues, for each day of continued noncompliance, if the department, on the basis of available information, finds that the person has violated or is in violation of this part or a rule promulgated under this part, has failed to obtain a permit required under this part, violates an order under this part, or has failed to comply with the terms of a permit issued under this part. If a single event constitutes an instance of violation of any combination of this part, a rule promulgated under this part, or a permit issued or order entered under this part, the amount of the administrative fine for that single event shall not exceed $10,000.00 for that violation. The assessment of an administrative fine may be either a part of a compliance order or a separate order issued by the department.

(2) The authority of the department under this section is limited to matters where the total administrative fine sought does not exceed $100,000.00 and the first alleged date of violation occurred within 12 months prior to initiation of the administrative action. Except as may otherwise be provided by applicable law, the department shall not condition the issuance of a permit on the payment of an administrative fine assessed pursuant to this section.

(3) Within 28 days of being assessed an administrative fine from the department, a person may file a petition with the department for review of this fine. Review of the fine shall be conducted pursuant to the contested case procedures of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws. If issued as part of a consent order issued pursuant to section 5528, only the amount of the administrative fine and the alleged violation on which the fine is based are subject to the contested case procedures of Act No. 306 of the Public Acts of 1969.

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

Popular name: Act 451

Popular name: NREPA

324.5530 Commencement of civil action by attorney general; relief; costs; jurisdiction; defenses; fines.

Sec. 5530. (1) The attorney general may commence a civil action against a person for appropriate relief, including injunctive relief, and a civil fine as provided in subsection (2) for any of the following:

(a) Violating this part or a rule promulgated under this part.

(b) Failure to obtain a permit under this part.

(c) Failure to comply with the terms of a permit or an order issued under this part.

(d) Failure to pay an air quality fee or comply with a filing requirement under this part.

(e) Failure to comply with the inspection, entry, and monitoring requirements of this part.

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(f) A violation described in section 5518(2).

(2) In addition to any other relief authorized under this section, the court may impose a civil fine of not more than $10,000.00 for each instance of violation and, if the violation continues, for each day of continued violation.

(3) In addition to other relief authorized under this section, the attorney general may, at the request of the department, file an action in a court of competent jurisdiction to recover the full value of the injuries done to the natural resources of the state.

(4) In issuing a final order in an action brought pursuant to this section, the court may award costs of litigation, including, but not limited to, reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party if the court determines that such an award is appropriate.

(5) A civil action brought under this section may be brought in the county in which the defendant is located, resides, or is doing business, or in the circuit court for the county of Ingham, or in the county in which the registered office of a defendant corporation is located, or in the county where the violation occurred.

(6) General defenses and affirmative defenses, that may otherwise apply under state law may apply in an action brought under this section as determined to be appropriate by a court of competent jurisdiction.

(7) Fines imposed under this section shall be assessed for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

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

Popular name: Act 451

Popular name: NREPA

324.5531 Violations as misdemeanors; violations as felonies; fines; defenses; definitions.

Sec. 5531. (1) A person who knowingly violates any requirement or prohibition of an applicable requirement of this part or a rule promulgated under this part or who fails to obtain or comply with a permit or comply with a final order or order of determination issued under this part is guilty of a misdemeanor punishable by a fine of not more than $10,000.00 per day, for each violation.

(2) A person who knowingly makes a false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file any notice, application, record, report, plan, or other document required to be submitted pursuant to this part or a rule promulgated under this part, or who knowingly fails to notify or report information required to be submitted under this part or a rule promulgated under this part, or who knowingly falsifies, tampers with, renders inaccurate, or knowingly fails to install any monitoring device or method required under this part or a rule promulgated under this part, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year and a fine of not more than $10,000.00 per day, for each violation.

(3) A person who knowingly fails to pay any air quality fee owed under this part is guilty of a misdemeanor punishable by a fine of not more than $10,000.00.

(4) A person who knowingly releases into the ambient air any specific chemical or any hazardous air pollutant listed in 40 C.F.R. part 68, section 68.130 (January 19, 1993) pursuant to the authority of section 112(r) of part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412, or both, contrary to applicable federal, state, or local requirements, or contrary to a permit issued under this part, and because of the quantities or concentrations of the substance released knows or should have known at the time that the release places another person in imminent danger of death or serious bodily injury is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $10,000.00, or both.

(5) A person who knowingly releases or causes the release into the ambient air any specific chemical or any hazardous air pollutant listed in 40 C.F.R. part 68, section 68.130 (January 19, 1993) pursuant to the authority of section 112(r) of part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412, or both, contrary to applicable federal, state, or local requirements, or contrary to a permit issued under this part, and who knows or should have known at the time that the release places another person in imminent danger of death or serious bodily injury, and the release results in death or serious bodily injury to any person is guilty of a felony punishable by imprisonment for not more than 6 years or a fine of not more than $25,000.00, or both.

(6) A person who knowingly releases into the ambient air any specific chemical or any hazardous air pollutant listed in 40 C.F.R. part 68, section 68.130 (January 19, 1993) pursuant to the authority of section 112(r) of part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412, or both, contrary to applicable federal, state, or local requirements, or contrary to a permit issued under this part, and who intended at that time to place another person in imminent danger of death or serious bodily injury, and whose actions do result in death or cause serious bodily injury to any person is guilty of a felony punishable by imprisonment for not

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more than 15 years or a fine of not more than $250,000.00, or both.

(7) In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury as required under subsections (4), (5), and (6), the defendant is responsible only for actual awareness or actual belief possessed, and knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant. However, in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(8) Fines imposed under this section shall be assessed for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

(9) A defendant may establish an affirmative defense to a prosecution under this section by showing by a preponderance of the evidence that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of any of the following:

(a) An occupation, a business, or a profession.

(b) Medical treatment or medical or scientific experimentation conducted by professionally approved methods if the person had been made aware of the risks involved prior to giving consent.

(10) All general defenses, affirmative defenses, and bars to prosecution that may otherwise apply with respect to state criminal offenses may apply under this section and shall be determined by the courts of this state having jurisdiction according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed by the courts in the light of reason and experience.

(11) Fines shall not be imposed pursuant to this section for a violation that was caused by an act of God, war, strike, riot, catastrophe, or other condition to which negligence or willful misconduct on the part of the person was not the proximate cause.

(12) As used in this section:

(a) “Serious bodily injury” means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(b) “Specific chemical” means a hazardous air pollutant listed in section 112(b)(1) of Part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412, except for the following compounds:

(*i*) Antimony compounds.

(*ii*) Arsenic compounds (inorganic including arsine).

(*iii*) Beryllium compounds.

(*iv*) Cadmium compounds.

(*v*) Chromium compounds.

(*vi*) Cobalt compounds.

(*vii*) Coke oven emissions.

(*viii*) Cyanide compounds.

(*ix*) Glycol ethers.

(*x*) Lead compounds.

(*xi*) Manganese compounds.

(*xii*) Mercury compounds.

(*xiii*) Fine mineral fibers.

(*xiv*) Nickel compounds.

(*xv*) Polycyclic organic matter.

(*xvi*) Radionuclides (including radon).

(*xvii*) Selenium compounds.

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

Popular name: Act 451

Popular name: NREPA

324.5532 Civil or criminal fines; factors to be considered in determining amount.

Sec. 5532. (1) A civil or criminal fine assessed, sought, or agreed upon under this part shall be appropriate to the violation.

(2) In determining the amount of any fine levied under this part, all of the following factors shall be considered:

(a) The size of the business.

(b) The economic impact of the penalty on the business.

(c) The violator's full compliance history and good faith efforts to comply.

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(d) The duration of the violation as established by any credible evidence, including evidence other than the applicable test method.

(e) Payment by the violator of penalties previously assessed for the same violation.

(f) The economic benefit of noncompliance.

(g) The seriousness of the violation.

(h) Such other factors as justice may require.

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

Popular name: Act 451

Popular name: NREPA

324.5533 Award; eligibility; rules.

Sec. 5533. The department may pay an award of up to $10,000.00 to an individual who provides information resulting in the assessment of a civil fine by a court in an action brought by the attorney general pursuant to section 5530, or leading to the arrest and conviction of a person under section 5531. An officer or employee of the United States, state of Michigan, an authorized representative of the department as defined in section 5526(3), or any other state or local government who furnishes information described in this section in the performance of an official duty is ineligible for payment under this section. In addition, an employee of the department of natural resources, a designee of the department of natural resources, or a person employed by the department of attorney general is ineligible to receive an award under this section regardless of whether the reported information came to his or her attention while functioning in an official capacity or as a private citizen. A person may not receive an award under this section for a violation of this part made by that person alone or in conjunction with others. An award shall not be made under this section until rules are promulgated by the department prescribing the criteria for making awards.

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

Popular name: Act 451

Popular name: NREPA

324.5534 Repealed. 1999, Act 231, Imd. Eff. Dec. 28, 1999.

Compiler's note: The repealed section pertained to certain violations exempt from penalties.

Popular name: Act 451

Popular name: NREPA

324.5535 Suspension of enforcement; reasons; variance.

Sec. 5535. Notwithstanding any other provision of this part, the department may suspend the enforcement of the whole or any part of any rule as it applies to any person who shows that the enforcement of the rule would be inequitable or unreasonable as to that person, or the department may suspend the enforcement of the rule for any reason considered by it to be sufficient to show that the enforcement of the rule would be an unreasonable hardship upon the person. Upon any suspension of the whole or any part of the rule the department shall grant to the person a variance from that rule. The department shall not suspend enforcement or grant a variance under this section that would violate the clean air act.

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

Popular name: Act 451

Popular name: NREPA

324.5536 Variance; considerations effecting.

Sec. 5536. In determining under what conditions and to what extent a variance from a rule or regulation that would not violate the clean air act may be granted, the department shall give due recognition to the progress which the person requesting the variance has made in eliminating or preventing air pollution. The department shall consider the reasonableness of granting a variance conditioned upon the person effecting a partial control of the particular air pollution or a progressive control of the air pollution over a period of time that it considers reasonable under all the circumstances or the department may prescribe other and different reasonable requirements with which the person receiving the variance shall comply.

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

Popular name: Act 451

Popular name: NREPA

324.5537 Variance; granting for undue hardship.

Sec. 5537. The department shall grant a variance from any rule to, and suspend the enforcement of the rule

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as it applies to, any person who shows in the case of the person and of the source, process, or process equipment that the person operates that his or her compliance with the rule or regulation, and that the acquisition, installation, operation and maintenance of a source or process, or process equipment required or necessary to accomplish the compliance, would constitute an undue hardship on the person and would be out of proportion to the benefits to be obtained by compliance. A variance shall not be granted under this section if the person applying for the variance is causing air pollution that is injurious to the public health or if the granting of the variance would violate the clean air act. Any variance granted shall not be construed as relieving the person who receives it from any liability imposed by other law for the maintenance of a nuisance.

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

Popular name: Act 451

Popular name: NREPA

324.5538 Variance; period granted; report; conditions.

Sec. 5538. Any variance granted pursuant to sections 5535, 5536, and 5537 shall be granted for a period of time, that does not exceed 1 year, as is specified by the department at the time of granting it, but any variance may be continued from year to year. Any variance granted by the department may be granted on the condition that the person receiving it shall report to the department periodically, as the department specifies, as to the progress which the person has made toward compliance with the rule of the department.

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

Popular name: Act 451

Popular name: NREPA

324.5539 Variance; revocation or modification of order; public hearing and notice required.

Sec. 5539. The department may revoke or modify any order permitting a variance by written order, after a public hearing held upon not less than 10 days' notice.

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

Popular name: Act 451

Popular name: NREPA

324.5540 Purpose of part; alteration of existing rights of actions or remedies.

Sec. 5540. It is the purpose of this part to provide additional and cumulative remedies to prevent and abate air pollution. This part does not abridge or alter rights of action or remedies now or hereafter existing. This part or anything done by virtue of this part shall not be construed as estopping persons from the exercise of their respective rights to suppress nuisances or to prevent or abate air pollution.

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

Popular name: Act 451

Popular name: NREPA

324.5541 Construction of part; evidentiary effect of determination by commission.

Sec. 5541. This part does not repeal any of the laws relating to air pollution which are not by this part expressly repealed. This part is ancillary to and supplements the laws now in force, except as they may be in direct conflict with this part. The final order or determination of the department shall not be used as evidence of presumptive air pollution in any suit filed by any person other than the department.

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

Popular name: Act 451

Popular name: NREPA

324.5542 Effect on existing ordinances or regulations; local enforcement; cooperation with local governmental units.

Sec. 5542. (1) Nothing in this part or in any rule promulgated under this part invalidates any existing ordinance or regulation having requirements equal to or greater than the minimum applicable requirements of this part or prevents any political subdivision from adopting similar provisions if their requirements are equal to or greater than the minimum applicable requirements of this part.

(2) When a political subdivision or enforcing official of a political subdivision fails to enforce properly the provisions of the political subdivision's ordinances, laws, or regulations that afford equal protection to the public as provided in this part, the department, after consultation with the local official or governing body of the political subdivision, may take such appropriate action as may be necessary for enforcement of the

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applicable provisions of this part.

(3) The department shall counsel and advise local units of government on the administration of this part. The department shall cooperate in the enforcement of this part with local officials upon request.

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

Popular name: Act 451

Popular name: NREPA

PART 57

SMALL BUSINESS CLEAN AIR ASSISTANCE

324.5701 Definitions.

Sec. 5701. As used in this part:

(a) "Clean air act" means chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q and the regulations promulgated under that act.

(b) "Office" means the office of the small business clean air ombudsman.

(c) "Ombudsman" means the small business clean air ombudsman.

(d) "Program" means the small business clean air assistance program.

(e) "Small business" means a business that is independently owned and operated and that is not dominant in its field as defined in 13 C.F.R. 121 and, unless adjusted as authorized under this section or section 5702, is a stationary source that meets all of the following requirements:

(*i*) Is owned or operated by a person that employs 100 or fewer individuals.

(*ii*) Is a small business concern as defined in the small business act, Public Law 85-536, 72 Stat. 384.

(*iii*) Is not a major stationary source as defined in Titles I and III of the clean air act or is a major stationary source as defined in Titles I and III of the clean air act because of its location in a nonattainment area.

(*iv*) Emits less than 50 tons per year of any air contaminant or air pollutant regulated pursuant to part 55 or the clean air act.

(*v*) Emits less than 75 tons per year of all air contaminants or air pollutants regulated pursuant to part 55 or the clean air act.

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

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities, including budgeting procurement and management-related functions, of the office of the small business clean air ombudsman to the Michigan jobs commission, see E.R.O. No. 1995-1, compiled MCL 408.49 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.5702 "Small business stationary source" explained.

Sec. 5702. (1) Upon petition by a source, the department may, after notice and opportunity for public comment, include as a small business stationary source for purposes of this section any stationary source that does not meet the criteria of subparagraph (*iii*), (*iv*), or (*v*) of section 5701(e) but which does not emit more than 100 tons per year of all air contaminants and air pollutants regulated pursuant to part 55 or the clean air act.

(2) The department, in consultation with the administrator of the United States environmental protection agency and the administrator of the United States small business administration and after providing notice and opportunity for public hearing, may exclude from the small business stationary source definition any category or subcategory of sources that the state determines to have sufficient technical and financial capabilities to meet the requirements of the clean air act and part 55 without the application of this part.

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

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities, including budgeting procurement and management-related functions, of the office of the small business clean air ombudsman to the Michigan jobs commission, see E.R.O. No. 1995-1, compiled MCL 408.49 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.5703 Office of small business clean air ombudsman; creation; exercise of powers and duties; appointment of executive officer.

Sec. 5703. (1) The office of the small business clean air ombudsman is created within the department of

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commerce. The office shall exercise its powers and duties independently of any state department or entity.

(2) The principal executive officer of the office is the small business clean air ombudsman, who shall be appointed by the governor.

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

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities, including budgeting procurement and management-related functions, of the office of the small business clean air ombudsman to the Michigan jobs commission, see E.R.O. No. 1995-1, compiled at MCL 408.49 of the Michigan Compiled Laws.

For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.5704 Office of ombudsman; responsibilities and duties.

Sec. 5704. The office of the ombudsman is responsible for assessing and ensuring that the goals of the program are being met and in addition shall coordinate or do all of the following:

(a) Conduct independent evaluations of all aspects of the program.

(b) Review and provide comments and recommendations to the United States environmental protection agency and state and local air pollution control authorities regarding the development and implementation of requirements that impact small businesses.

(c) Facilitate and promote the participation of small businesses in the development of rules that impact small businesses.

(d) Assist in providing reports to the governor and legislature and the public regarding the applicability of the requirements of this part, part 55, and the clean air act to small business.

(e) Aid in the dissemination of information, including, but not limited to, air pollution requirements and control technologies, to small businesses and other interested parties.

(f) Participate in or sponsor meetings and conferences with state and local regulatory officials, industry groups, and small business representatives.

(g) Aid in investigating and resolving complaints and disputes from small businesses against the state or local air pollution control authorities, or both.

(h) Periodically review the work and services provided by the program with trade associations and representatives of small business.

(i) Refer small businesses to the appropriate specialist in the program where they may obtain information and assistance on affordable alternative technologies, process changes, and products and operational methods to help reduce air pollution and accidental releases.

(j) Arrange for and assist in the preparation of guideline documents by the program and ensure that the language is readily understandable by laypersons.

(k) Work with trade associations and small businesses to bring about voluntary compliance with the clean air act and part 55.

(*l*) Work with regional and state offices of the small business administration, the United States department of commerce and state department of commerce, and other federal and state agencies that may have programs to financially assist small businesses in need of funds to comply with environmental requirements.

(m) Work with private sector financial institutions to assist small businesses in locating sources of funds to comply with state and local air pollution control requirements.

(n) Conduct studies to evaluate the impacts of the clean air act and part 55 on the state's economy, local economies, and small businesses.

(o) Work with other states to establish a network for sharing information on small businesses and their efforts to comply with the clean air act and the pertinent air pollution act for their state.

(p) Make recommendations to the department and the legislature concerning the reduction of any fee required under the clean air act or part 55 to take into account the financial resources of small businesses.

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

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities, including budgeting procurement and management-related functions, of the office of the small business clean air ombudsman to the Michigan jobs commission, see E.R.O. No. 1995-1, compiled MCL 408.49 of the Michigan Compiled Laws.

For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

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324.5705 Small business clean air assistance program; creation; purpose.

Sec. 5705. The program is created in the department of commerce. The program shall develop adequate mechanisms for all of the following:

(a) Developing, collecting, and coordinating information on compliance methods and technologies for small businesses.

(b) Encouraging lawful cooperation among small businesses and other persons to further compliance with the clean air act and part 55.

(c) Assisting small business with information regarding pollution prevention and accidental release detection and prevention, including, but not limited to, providing information concerning alternative technologies, process changes, and products and methods of operation that help reduce air pollution.

(d) Establishing a compliance assistance program that assists small businesses in determining applicable requirements for compliance and the procedures for obtaining permits efficiently in a timely manner under the clean air act or part 55, or both.

(e) Providing mechanisms and access to information so that small businesses receive notification of their rights under the clean air act and part 55 in a manner and form that assures reasonably adequate time for small businesses to evaluate their compliance methods or applicable proposed or final rules or standards under the clean air act and part 55.

(f) Informing small businesses of their obligations under the clean air act and part 55, including mechanisms for referring small businesses to qualified auditors or to the state if the state elects to provide audits to determine compliance with the clean air act and part 55. To the extent permissible by state and federal law, audits shall be separate from the formal inspection and compliance program.

(g) Providing information on how to obtain consideration from the department on requests from small businesses for modifications of any work practice, technological method of compliance, or the schedule of milestones for reductions of emissions preceding an applicable compliance date.

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

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities, including budgeting procurement and management-related functions, of the office of the small business clean air ombudsman to the Michigan jobs commission, see E.R.O. No. 1995-1, compiled at MCL 408.49 of the Michigan Compiled Laws.

For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.5706 Access to information, records, and documents; assistance to ombudsman.

Sec. 5706. Upon request, the ombudsman shall be given access to all information, records, and documents in the possession of the commission and the department that the ombudsman considers necessary to fulfill the responsibilities of the office other than information described in section 13 of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.243 of the Michigan Compiled Laws. The commission and the department shall also assist the ombudsman in fulfilling his or her responsibilities under this part.

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

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities, including budgeting procurement and management-related functions, of the office of the small business clean air ombudsman to the Michigan jobs commission, see E.R.O. No. 1995-1, compiled at MCL 408.49 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.5707 Information obtained from small businesses; confidentiality.

Sec. 5707. Information obtained by the office or the program from small businesses that utilize their services shall be held in confidence by those employed by the office or the program to the extent authorized under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws, including, but not limited to, those provisions pertaining to exemptions from disclosure for trade secrets and commercial and financial information.

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

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities, including budgeting procurement and management-related functions, of the office of the small business clean air ombudsman to the Michigan jobs commission, see E.R.O. No. 1995-1, compiled at MCL 408.49 of the Michigan Compiled Laws.

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Popular name: Act 451

Popular name: NREPA

324.5708 Small business clean air compliance advisory panel.

Sec. 5708. (1) The small business clean air compliance advisory panel is created within the program.

(2) The advisory panel shall be broadly representative of the regulated small business community and shall include women members and members who are minorities. The advisory panel shall consist of the following members:

(a) Two members appointed by the governor to represent the general public and who are not owners or representatives of owners of small business stationary sources.

(b) One member appointed by the republican leader of the senate who is an owner or a representative of owners of small business stationary sources.

(c) One member appointed by the democratic leader of the senate who is an owner or a representative of owners of small business stationary sources.

(d) One member appointed by the republican leader of the house of representatives who is an owner or a representative of owners of small business stationary sources.

(e) One member appointed by the democratic leader of the house of representatives who is an owner or a representative of owners of small business stationary sources.

(f) One member appointed by the department.

(3) Members of the advisory panel shall serve for terms of 4 years, or until a successor is appointed, whichever is later. However, of the members first appointed, the members appointed by the governor shall serve for 3 years, the members appointed by the senate shall serve for 1 year, and the members appointed by the house of representatives and the member appointed by the department shall serve for 2 years.

(4) If a vacancy occurs on the advisory panel, the governor, the department, or the appropriate legislative leader who made the appointment shall make an appointment for the unexpired term in the same manner as the original appointment.

(5) The first meeting of the advisory panel shall be called within 90 days of the appointment of all advisory panel members. At the first meeting the advisory panel shall elect from among its members a chairperson and other officers as it considers necessary or appropriate.

(6) A majority of the members of the advisory panel constitutes a quorum for the transaction of business at a meeting of the advisory panel. A majority of the members present and serving are required for official action of the advisory panel.

(7) Members of the advisory panel shall serve without compensation. However, members of the advisory panel may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the advisory panel.

(8) The advisory panel shall do all of the following:

(a) Consult with the ombudsman and the head of the program to plan the work of the panel, including the frequency of meetings, agenda items, and reports to be issued by the panel.

(b) Determine whether the program should utilize private contractors hired by the program or utilize expertise within the program, or both, to meet the requirements of this part that pertain to providing technical assistance to small businesses.

(c) Prepare advisory reports concerning all of the following:

(*i*) The effectiveness of the office and program.

(*ii*) The difficulties encountered and degree and severity of enforcement of part 55.

(*iii*) The costs of operating the office and the program.

(*iv*) The average costs of different categories of small businesses in complying with the air quality enforcement program of this state.

(d) Periodically report to the administrator of the United States environmental protection agency regarding compliance by the program with the broad intent of all of the following acts as may be applicable:

(*i*) Chapter 35 of title 44 of the United States Code, 44 U.S.C. 3501 to 3520, relating to paperwork reduction.

(*ii*) Sections 601 to 612 of title 5 of the United States Code, 5 U.S.C. 601 to 612, relating to regulatory flexibility.

(*iii*) Section 504 of title 5 of the United States Code, 5 U.S.C. 504, and section 2412 of title 28 of the United States Code, 28 U.S.C. 2412, relating to equal access to justice.

(e) Review information prepared by the program for small businesses to assure that the information is understandable to laypersons.

(f) Utilize the program to act as staff to develop and disseminate the work product of the advisory panel.

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(9) The advisory panel shall provide copies of advisory reports prepared by the advisory panel to the United States environmental protection agency, the department, the legislature, and the department of commerce. In addition, the reports shall be made available to any person upon request.

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

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities, including budgeting procurement and management-related functions, of the office of the small business clean air ombudsman to the Michigan jobs commission, see E.R.O. No. 1995-1, compiled at MCL 408.49 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

PART 59

AIR POLLUTION CONTROL FACILITY; TAX EXEMPTION

324.5901 "Facility" defined.

Sec. 5901. As used in this part, "facility" means machinery, equipment, structures, or any part or accessories of machinery, equipment, or structures, installed or acquired for the primary purpose of controlling or disposing of air pollution that if released would render the air harmful or inimical to the public health or to property within this state. Facility includes an incinerator equipped with a pollution abatement device in effective operation. Facility does not include an air conditioner, dust collector, fan, or other similar facility for the benefit of personnel or of a business. Facility also means the following, if the installation was completed on or after July 23, 1965:

(a) Conversion or modification of a fuel burning system to effect air pollution control. The fuel burner portion only of the system is eligible for tax exemption.

(b) Installation of a new fuel burning system to effect air pollution control. The fuel burner portion only of the system is eligible for tax exemption.

(c) A process change involving production equipment made to satisfy the requirements of part 55 and rules promulgated under that part. The maximum cost allowed shall be 25% of the cost of the new process unit but shall not exceed the cost of the conventional control equipment applied on the basis of the new process production rate on the preexisting process.

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

Popular name: Act 451

Popular name: NREPA

324.5902 Tax exemption certificate; application; contents; approval; notice; hearing; tax exemption.

Sec. 5902. (1) An application for a pollution control tax exemption certificate shall be filed with the state tax commission in a manner and in a form as prescribed by the state tax commission. The application shall contain plans and specifications of the facility, including all materials incorporated or to be incorporated in the facility and a descriptive list of all equipment acquired or to be acquired by the applicant for the purpose of pollution control, together with the proposed operating procedure for the control facility.

(2) Before issuing a certificate, the state tax commission shall seek approval of the department and give notice in writing by certified mail to the department of treasury and to the assessor of the taxing unit in which the facility is located or to be located, and shall afford to the applicant and the assessor an opportunity for a hearing. Tax exemption granted under this part shall be reduced to the extent of any commercial or productive value derived from any materials captured or recovered by any air pollution control facility as defined in this part.

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

Popular name: Act 451

Popular name: NREPA

324.5903 Tax exemption certificate; findings of department; notice to state tax commission; issuance and effective date of certificate.

Sec. 5903. If the department finds that the facility is designed and operated primarily for the control, capture, and removal of pollutants from the air, and is suitable, reasonably adequate, and meets the intent and purposes of part 55 and rules promulgated under that part, the department shall notify the state tax commission, which shall issue a certificate. The effective date of the certificate is the date on which the certificate is issued.

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

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Popular name: Act 451

Popular name: NREPA

324.5904 Tax exemptions; statement in certificate.

Sec. 5904. (1) For the period subsequent to the effective date of the certificate and continuing as long as the certificate is in force, a facility covered by the certificate is exempt from real and personal property taxes imposed under the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws.

(2) Tangible personal property purchased and installed as a component part of the facility is exempt from both of the following:

(a) Sales taxes imposed under the general sales tax act, Act No. 167 of the Public Acts of 1933, being sections 205.51 to 205.78 of the Michigan Compiled Laws.

(b) Use taxes imposed under the use tax act, Act No. 94 of the Public Acts of 1937, being sections 205.91 to 205.111 of the Michigan Compiled Laws.

(3) The certificate shall state the total acquisition cost of the facility entitled to exemption.

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

Popular name: Act 451

Popular name: NREPA

324.5905 Tax exemption certificate; issuance; mailing to applicant, local tax assessors, and treasury department; filing; notice of refusal.

Sec. 5905. The state tax commission shall send an air pollution control tax exemption certificate, when issued, by certified mail to the applicant, and certified copies by certified mail to the assessor of the taxing unit in which any property to which the certificate relates is located or to be located and to the department of treasury, which copies shall be filed of record in their offices. Notice of the state tax commission's refusal to issue a certificate shall be sent by certified mail to the applicant, to the department of treasury, and to the assessor.

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

Popular name: Act 451

Popular name: NREPA

324.5906 Tax exemption certificate; modification or revocation; grounds; notice and hearing; statute of limitations.

Sec. 5906. (1) The state tax commission, on notice by certified mail to the applicant and opportunity for a hearing, shall, on its own initiative or on complaint of the department, the department of treasury, or the assessor of the taxing unit in which any property to which the certificate relates is located, modify or revoke the certificate if any of the following appear:

(a) The certificate was obtained by fraud or misrepresentation.

(b) The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of a facility or to operate the facility for the purpose and degree of control specified in the certification or an amended certificate.

(c) The facility covered by the certificate is no longer used for the primary purpose of pollution control and is being used for a different purpose.

(d) Substantial noncompliance with part 55 or any rule promulgated under that part.

(2) On the mailing by certified mail to the certificate holder, the department of treasury, and the local assessor of notice of the action of the state tax commission modifying or revoking a certificate, the certificate shall cease to be in force or shall remain in force only as modified. If a certificate is revoked because it was obtained by fraud or misrepresentation, all taxes that would have been payable if a certificate had not been issued are immediately due and payable with the maximum interest and penalties prescribed by applicable law. A statute of limitations shall not operate in the event of fraud or misrepresentation.

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

Popular name: Act 451

Popular name: NREPA

324.5907 Tax exemption certificate; refusal; appeal.

Sec. 5907. A party aggrieved by the issuance, refusal to issue, revocation, or modification of a pollution control tax exemption certificate may appeal from the finding and order of the state tax commission in the manner and form and within the time provided by the administrative procedures act of 1969, Act No. 306 of

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the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

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

Popular name: Act 451

Popular name: NREPA

324.5908 State tax commission; rules; administration of part.

Sec. 5908. The state tax commission may adopt rules as it considers necessary for the administration of this part. These rules shall not abridge the authority of the department to determine whether or not air pollution control exists within the meaning of this part.

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

Popular name: Act 451

Popular name: NREPA

PART 61
EMISSIONS FROM VESSELS

324.6101 Vessels; blowing flues prohibited; exceptions.

Sec. 6101. A marine vessel while navigating in the waters of this state within 1 mile of land shall not blow flues unless necessary under an emergency condition for the safe navigation of the vessel or to alleviate or extinguish a flash fire in the boiler up-takes or during departure-arrival operations.

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

Popular name: Act 451

Popular name: NREPA

324.6102 Violation; penalty; separate offenses.

Sec. 6102. A person who is convicted of violating this part is guilty of a misdemeanor, punishable by a fine of not more than $1,000.00. Each occurrence is a separate offense.

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

Popular name: Act 451

Popular name: NREPA

PART 63
MOTOR VEHICLE EMISSIONS TESTING FOR WEST MICHIGAN

324.6301 Meanings of words and phrases.

Sec. 6301. For the purposes of this part, the words and phrases contained in sections 6302 to 6304 have the meanings ascribed to them in those sections.

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

Popular name: Act 451

Popular name: NREPA

324.6302 Definitions; A to D.

Sec. 6302. (1) “Alternative fuel” means the following fuel sources used to propel a motor vehicle:

(a) Compressed natural gas.

(b) Diesel fuel.

(c) Electric power.

(d) Propane.

(e) Any other source as defined by rule promulgated by the department.

(2) “Certificate of compliance” means a serially numbered written instrument or document that is issued to the owner of a motor vehicle upon passing an inspection or reinspection and is evidence that the motor vehicle complies with the standards and criteria adopted by the department under this part. The department shall consult with the department of natural resources when appropriate to determine that rules and standards will comply with federal requirements and sound environmental considerations.

(3) “Certificate of waiver” means a serially numbered written document or sticker indicating that the standards and criteria of the department have been met for a motor vehicle pursuant to this part.

(4) “Clean air act” means chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f,

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and 7671 to 7671q. Clean air act includes the regulations promulgated under the clean air act.

(5) "Consumer protection" means protecting the public from unfair or deceptive practices.

(6) "Contractor" means a person who enters into a contract with the department to operate public motor vehicle inspection stations under this part.

(7) "Cut point" means the level of pollutants emitted that is used in determining whether a particular make and model of motor vehicle passes or fails all or a part of an inspection.

(8) "Department" means the state transportation department.

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

Popular name: Act 451

Popular name: NREPA

324.6303 Definitions; E to N.

Sec. 6303. (1) "Emission control device" means a catalytic converter, thermal reactor, or other component part used by a vehicle manufacturer to reduce emissions or to comply with emission standards prescribed by regulations promulgated by the United States environmental protection agency under the clean air act.

(2) "Initial inspection" means an inspection performed on a motor vehicle for the first time in a test cycle.

(3) "Inspection" means testing of a motor vehicle for compliance with emission control requirements of this part and the clean air act.

(4) "Maintenance" means the repair or adjustment of a motor vehicle to bring that motor vehicle into compliance with emission control requirements of this part and rules promulgated under this part.

(5) "Motor vehicle" or "vehicle" means a self-propelled vehicle as defined in section 79 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.79 of the Michigan Compiled Laws, of 10,000 pounds or less gross vehicle weight, which is required to be registered for use upon the public streets and highways of this state under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws. For purposes of this part, motor vehicle includes those vehicles owned by the government of the United States, this state, and any political subdivision of this state.

(6) "National ambient air quality standards" means the air quality standards for outside air as established in the clean air act.

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

Popular name: Act 451

Popular name: NREPA

324.6304 Definitions; P to T.

Sec. 6304. (1) "Pollutants" means nitrogen oxides, carbon monoxide, hydrocarbons, and other toxic substances emitted from the operation of a motor vehicle.

(2) "Public inspection station" means a facility for motor vehicle inspection operated under contract with the department as provided in this part.

(3) "Tamper with" means to remove or render inoperative, to cause to be removed or rendered inoperative, or to make less operative an emission control device or an element of an emission control device that is required by the clean air act to be installed in or on a motor vehicle.

(4) "Test-only network" means a network of inspection stations that perform official vehicle emissions inspections and in which owners and employees of those stations, or companies owning those stations, are contractually or legally barred from engaging in motor vehicle repair or service, motor vehicle parts sales, and motor vehicle sale and leasing, either directly or indirectly, and are barred from referring vehicle owners to particular providers of motor vehicle repair services.

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

Popular name: Act 451

Popular name: NREPA

324.6305 Motor vehicle emissions inspection and maintenance program fund; account.

Sec. 6305. (1) There is established a motor vehicle emissions inspection and maintenance program fund to be maintained as a separate fund in the state treasury and to be administered by the department. Money received and collected for vehicle emissions inspections under this part shall be deposited in the state treasury to the credit of the motor vehicle emissions inspection and maintenance program fund.

(2) The vehicle emissions inspection account is created in the motor vehicle emissions inspection and maintenance program fund. Money in the vehicle emissions inspection account shall be appropriated by the legislature for the purposes of a public education program to be conducted by the department, start-up costs

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required to implement requirements of the motor vehicle emissions inspection and maintenance program under this part, administration and oversight by the department, enforcement of the motor vehicle emissions inspection and maintenance program through the vehicle registration process by the department of state, gasoline inspection and testing, and other activities related to the motor vehicle emissions inspection and maintenance program.

(3) Funds remaining in the motor vehicle emissions inspection and maintenance program fund at the end of a fiscal year shall not lapse to the general fund but shall remain in the motor vehicle emissions inspection and maintenance program fund for appropriation in the following year.

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

Popular name: Act 451

Popular name: NREPA

324.6306 Operation of motor vehicle; prohibition; testing; enforcement; inspection and maintenance program; implementation in Kent, Ottawa, and Muskegon counties; exclusion; test procedures and components; vehicles subject to inspection; rules; suspension of vehicle registration; suspension of program.

Sec. 6306. (1) Each motor vehicle subject to this part shall be inspected for emissions as provided in this part. A person shall not operate a motor vehicle subject to this part whose certificate of compliance has expired or who has not received a time extension or waiver and whose vehicle fails to meet emission cut points established by the department or other emission control requirements established by the department in this part. If a vehicle subject to testing under this part has not been tested within the previous 12 months, the prospective seller of the vehicle shall have the vehicle tested and complete necessary repairs before offering the vehicle for sale.

(2) To enforce this section, the department shall implement and administer a motor vehicle emissions inspection and maintenance program designed to meet the performance standards for a motor vehicle emissions inspection and maintenance program as established by the United States environmental protection agency in 40 C.F.R. 51.351 in the counties of Kent, Ottawa, and Muskegon in those areas that are not in attainment of the national ambient air quality standards for ozone. However, those counties that would be in attainment of the national ambient air quality standards for ozone, given base line emissions for that county, but for emissions emanating from outside of the state, are excluded from implementation of such a program unless the department of environmental quality shall affirmatively determine by clear and convincing evidence, based on study of formation and transport of ozone, that the control of motor vehicle emissions would significantly contribute to the attainment of the national ambient air quality standards for ozone as promulgated under the clean air act. The motor vehicle emissions inspection and maintenance program shall include the following test procedures and components:

(a) Biennial testing.

(b) Test-only network.

(c) Transient mass-emission evaporative system, purge, and pressure testing on 1981 and later model year vehicles using the IM240 driving cycle.

(d) Two-speed idle testing, antitampering, and pressure test on 1975 to 1980 vehicles in accordance with the following:

(*i*) Visual antitampering inspection of the catalytic converter, gas cap, PCV valve, air pump, and fuel inlet restrictor on light-duty gas vehicles and light-duty gas trucks of 10,000 pounds or less gross vehicle weight.

(*ii*) Pressure test of the evaporative system for light-duty gas vehicles and light-duty gas trucks of 10,000 pounds or less gross vehicle weight.

(e) On-board diagnostic check for vehicles so equipped.

(3) The cut points set forth in test procedures, quality control requirements, and equipment specifications issued by the United States environmental protection agency are hereby adopted for the emissions testing program authorized in this part.

(4) Equipment and test procedures shall meet the requirements of appendices A through E to subpart S of 40 C.F.R. 51 and the test procedures, quality control requirements, and equipment specifications issued by the United States environmental protection agency.

(5) Vehicles shall be subject to inspection according to the following:

(a) The first initial inspection under this part for each even numbered model year vehicle shall take place within 6 months before the expiration of the vehicle registration in an even numbered calendar year.

(b) The first initial inspection under this part for each odd numbered model year vehicle shall take place within 6 months before the expiration of the vehicle registration in an odd numbered calendar year.

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(6) The department, in consultation with the department of state and the department of environmental quality, may promulgate rules for the administration of the motor vehicle emissions inspection and maintenance program, including, but not limited to, all of the following:

(a) Standards for public inspection station equipment, including emission testing equipment.

(b) Emission test cut points and other emission control requirements based on the clean air act and the state implementation plan.

(c) Exemptions from inspections as authorized under this part.

(d) Standards and procedures for the issuance of certificates of compliance and certificates of waiver from inspection and maintenance program requirements.

(e) Rules to ensure that owners of motor vehicles registered in this state who temporarily reside out of state are not unduly inconvenienced by the requirements of this part. The rules may include any of the following:

(*i*) Reciprocal agreements with other states that require motor vehicle inspections that are at least as stringent as those required under this part and rules promulgated under this part.

(*ii*) Provision for time extensions of not more than 2 years for persons temporarily residing in a state, the District of Columbia, or a territory of the United States with which this state has not entered into a reciprocal agreement for vehicle emissions inspection and maintenance. Additional time extensions shall be granted to persons temporarily residing out of state because of military service.

(7) The department may promulgate rules to require the inspection of motor vehicles through the use of remote sensing devices. These rules may provide for use of remote sensing devices for research purposes, but shall not provide for any checklanes or other measures by which motorists will be stopped on highways or other areas open to the general public.

(8) Upon receipt of documentation from the department, the department of state may suspend the registration of any vehicle that is not in compliance with this part and the rules promulgated under this part and for which the required certificate of compliance has not been obtained.

(9) If any area in this state subject to this part is redesignated by the United States environmental protection agency as being in attainment with the national ambient air quality standards for ozone, a motor vehicle emissions inspection and maintenance program authorized by this part is suspended and shall only be reimplemented if required as a contingency measure included in a maintenance plan approved by the United States environmental protection agency as part of the redesignation as an ozone attainment area. The department may only implement the contingency measure if there is observation of an actual violation of the ozone national ambient air quality standard under 40 C.F.R. 50.9 during the maintenance period.

(10) Implementation of a motor vehicle emissions inspection and maintenance program authorized by this part shall be suspended if the classification of the Grand Rapids and Muskegon ozone nonattainment areas is adjusted from moderate ozone nonattainment areas to transitional or marginal nonattainment areas by the United States environmental protection agency pursuant to its authority under section 181 of the clean air act, 42 U.S.C. 7511, or if the United States environmental protection agency determines that a motor vehicle emissions inspection and maintenance program is not applicable or is not necessary for either of these areas to meet the requirements of the clean air act.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1996, Act 564, Imd. Eff. Jan. 16, 1997.

Popular name: Act 451

Popular name: NREPA

324.6307 Registration renewal; vehicle inspection and certificate of compliance or waiver required; validity; prohibition.

Sec. 6307. (1) The department of state shall not renew the registration of a motor vehicle subject to this part unless the vehicle has been inspected as provided in this part and a certificate of compliance or a certificate of waiver has been issued.

(2) Certificates of compliance and certificates of waiver issued under this part are valid for 2 years.

(3) If not exempted by this part or rules promulgated under this part, a person shall not drive a motor vehicle registered in an area required to have a motor vehicle emissions inspection and maintenance program without a valid certificate of compliance or certificate of waiver.

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

Popular name: Act 451

Popular name: NREPA

324.6308 Repealed. 1996, Act 564, Imd. Eff. Jan. 16, 1997.

Compiler's note: The repealed section pertained to exemption of certain areas to requirements of part.

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Popular name: Act 451

Popular name: NREPA

324.6309 Judicial relief.

Sec. 6309. The state should pursue judicial relief, either alone or in cooperation with other states, from the requirements or penalties imposed by the clean air act.

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

Popular name: Act 451

Popular name: NREPA

324.6310 Inspection fee; initial inspections; free reinspections; remittance and deposit of inspection fee.

Sec. 6310. (1) The department, in consultation with the department of state, may establish an inspection fee not to exceed $24.00 adjusted annually by the percentage increase or decrease in the Detroit consumer price index rounded to the nearest whole dollar. In establishing the fee or other funding sources, the department shall include the direct and indirect costs of the vehicle emissions inspection, estimated start-up costs, estimated cost for a public information program, administration and oversight by the department, and enforcement costs by the department of state. The fee, if established, shall be paid by the motor vehicle owner to the operator of the inspection station at the time of an initial vehicle emissions inspection.

(2) Initial inspections must take place within 6 months before the expiration of the registration for the vehicle or the expiration of the certificate of compliance, time extension, or certificate of waiver issued under this part. Vehicles subject to this part that are not required to be registered in this state shall be presented for inspection during each biennial inspection period at a time set by the department.

(3) The owner of a motor vehicle subject to this part that has failed an initial vehicle emissions inspection is entitled to 1 free reinspection after the completion of necessary repairs designed to bring the vehicle into compliance with clean air act standards.

(4) By the fifteenth day of each month, each inspection station shall remit the amount of the inspection fee required for administration and oversight under the contractual agreement entered into with the department to the department of treasury for deposit in the motor vehicle emissions inspection and maintenance program fund.

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

Popular name: Act 451

Popular name: NREPA

324.6311 Vehicles exempt from inspection requirements of part.

Sec. 6311. The following vehicles are exempt from the inspection requirements of this part:

(a) Motor vehicles that are exempted by rules promulgated by the department because of prohibitive inspection problems or inappropriateness for inspection.

(b) A motor vehicle manufactured before the 1975 model year.

(c) Vehicles that are licensed as historic vehicles under section 803a of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.803a of the Michigan Compiled Laws.

(d) A motor vehicle that has as its only fuel source an alternative fuel.

(e) A motorcycle.

(f) A motor vehicle used for covert monitoring of inspection facilities.

(g) A new motor vehicle, immediately after issuance of the vehicle's first title until the year of the next biennial inspection for the vehicle model year according to section 6306(5).

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

Popular name: Act 451

Popular name: NREPA

324.6312 Public inspection stations; contracts with private entities to conduct inspections; competitive evaluation process; notice of requests for proposals and contract awards; factors to be considered during contractor evaluation process.

Sec. 6312. (1) The department shall contract with a private entity or entities for the design, construction, equipment, establishment, maintenance, and operation of public inspection stations to conduct vehicle emissions inspections as required by this part.

(2) The department shall seek to obtain the highest quality service for the lowest cost through a competitive evaluation process for contractors.

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(3) The department shall provide adequate public notice of the requests for proposals by advertising in a newspaper of general circulation in the state not later than November 13, 1993. The department shall award the contract with reasonable promptness by written notice to the responsible offeror whose proposal has been evaluated and is determined to be the most advantageous to the state, taking into consideration the requirements of this part and rules promulgated under this part, or as otherwise required by the department of management and budget.

(4) In addition to the other requirements of this part, the director of the department shall give balanced consideration during the contractor evaluation process to all of the following factors:

(a) The public convenience of the inspection station, including the provisions for average mileage to an inspection station and the waiting time at a station.

(b) The unit cost per inspection.

(c) The degree of technical content of the proposal, including test-accuracy specifications and quality of testing services, and the data and methodology used to prepare the network design, and other technological aspects of the proposal.

(d) The experience of the contractor and the probability of a successful performance by the contractor, including an evaluation of the capacity, resources, and technical and management skills to adequately construct, equip, operate, and maintain a sufficient number of public inspection stations to meet the demand.

(e) The financial stability of the contractor. The department may make reasonable inquiries to determine the financial stability of an offeror. The failure of an offeror to promptly supply information in connection with such an inquiry is grounds for a determination of nonresponsibility with respect to that offeror.

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

Popular name: Act 451

Popular name: NREPA

324.6313 Contract provisions.

Sec. 6313. In addition to any other provisions of this part, the contract authorized by section 6312 shall contain all of the following provisions:

(a) The minimum requirements for adequate staff, equipment, management, and hours of operation of inspection stations.

(b) The submission of reports and documentation concerning the operation of official inspection stations as required by this part.

(c) Surveillance to ensure compliance with vehicular emissions standards, procedures, rules, regulations, and laws.

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

Popular name: Act 451

Popular name: NREPA

324.6314 Public inspection stations.

Sec. 6314. (1) The number and locations of the public inspection stations shall provide convenient service for motorists and shall be consistent with all of the following:

(a) The network of stations shall be sufficient to assure short driving distances and to assure that waiting times to get a vehicle inspected do not exceed 15 minutes more than 4 times a month.

(b) When there are more than 4 vehicles in a queue waiting to be tested, spare lanes shall be opened and additional staff employed to reduce wait times.

(c) A person shall not be required to make an appointment for a vehicle inspection.

(d) There shall be adequate queuing space for each inspection lane at each inspection station to accommodate on the station property all motor vehicles waiting for inspection.

(e) There shall be at least 2 inspection stations located within each county subject to the motor vehicle emissions inspection and maintenance program under this part.

(2) Public inspection stations shall inspect and reinspect motor vehicles in accordance with this part.

(3) A public inspection station shall inspect and reinspect motor vehicles in accordance with the rules promulgated under this part by the department. The inspection station shall issue a certificate of compliance for a motor vehicle that has been inspected and determined to comply with the standards and criteria of the department pursuant to the rules promulgated under section 6305. If a certificate of compliance is not issued, the inspection station shall provide a written inspection report describing the reason for rejection and, if appropriate, the repairs needed or likely to be needed to bring the vehicle into compliance with the standards and criteria.

(4) Stations shall provide a process by which vehicles being reinspected shall be accommodated before

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vehicles waiting for an initial inspection.

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

Popular name: Act 451

Popular name: NREPA

324.6315 Certificate of waiver.

Sec. 6315. (1) A certificate of waiver shall be issued for a motor vehicle that fails an initial inspection and a subsequent reinspection if the actual cost of maintenance already performed and designed to bring the vehicle into compliance with clean air act standards in accordance with the inspection report is at least $300.00, adjusted in January of each year by the increase or decrease in the Detroit consumer price index rounded to the nearest whole dollar.

(2) The costs covered by vehicle warranty and the costs necessary to repair or replace any emission control equipment that has been removed, dismantled, tampered with, misfueled, or otherwise rendered inoperative shall not be considered in determining eligibility for a certificate of waiver pursuant to subsection (1).

(3) Owners of vehicles subject to a transient IM240 emission test may apply to the department for a certificate of waiver after failing an initial inspection and a subsequent reinspection even though the dollar limit stated in subsection (1) for the cost of maintenance already performed has not been met. The department shall perform a complete, documented physical and functional diagnosis and inspection. If the diagnosis and inspection shows that no additional emission-related repairs are needed or that the vehicle presents prohibitive inspection problems or is inappropriate for inspection, the department may issue a certificate of waiver.

(4) Issuance of a certificate of waiver shall be conditioned upon meeting the criteria established by regulations promulgated by the United States environmental protection agency in 40 C.F.R. 51.360.

(5) A temporary certificate of waiver, valid for not more than 15 days, may be issued to a motor vehicle to allow time for necessary maintenance and reinspection. A temporary certificate of waiver may be issued not more than twice for the same motor vehicle.

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

Popular name: Act 451

Popular name: NREPA

324.6316 Implementation of continuing education programs; protection of public from fraud and abuse; ensuring proper and accurate emission inspection results; evaluation; compilation of data; report.

Sec. 6316. (1) The department, directly or by contract, shall implement continuing education programs to begin 6 months before the commencement of the public inspection program in a county. A continuing education program shall consist of a component designed to educate the general public about the motor vehicle emissions inspection and maintenance program and a component to inform those who will perform maintenance requirements under this part.

(2) The department shall institute procedures and mechanisms to protect the public from fraud and abuse by inspectors, mechanics, and others involved in the inspection and maintenance program. This shall include a challenge mechanism by which a vehicle owner can contest the results of an inspection. It shall include mechanisms for protecting whistleblowers and following up on complaints by the public or others involved in the process. It shall include a program to assist owners in obtaining warranty-covered repairs for eligible vehicles that fail a test.

(3) The department shall evaluate, inspect, and provide quality assurance for the inspection and maintenance program established under this part to ensure proper and accurate emission inspection results. The department shall be responsible for issuance of certificates of waiver and time extensions.

(4) The department shall compile data and undertake studies necessary to evaluate the cost, effectiveness, and benefits of the motor vehicle inspection program. The department shall compile data on failure rate, compliance rate, the number of certificates issued, and other similar matters in accordance with 40 C.F.R. 51.365 and 51.366. The department shall make an annual report on the operation of the motor vehicle inspection program to the standing committees of the legislature that primarily address issues pertaining to public health or protection of the environment by January 1, 1995, and each year thereafter.

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

Popular name: Act 451

Popular name: NREPA

324.6317 Certificate of compliance; issuance.

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Sec. 6317. A contractor shall not issue a certificate of compliance for a motor vehicle that has not been inspected and has not met or exceeded emission cut points established by the department in accordance with this part and the rules promulgated under this part.

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

Popular name: Act 451

Popular name: NREPA

324.6318 Furnishing certain information about repair facility; guidelines; failure of vehicle to pass inspection; availability of certificates of waiver.

Sec. 6318. (1) An employee, owner, or operator of a public inspection station shall not furnish information about the name or other description of a repair facility or other place where maintenance may be obtained. The department shall develop guidelines for provision of this information in cooperation with the department of state, and shall provide the house and senate standing committees dealing with transportation matters with those guidelines before January 1, 1995.

(2) Each public inspection station shall furnish the following information upon failure of the vehicle to pass inspection:

(a) A written inspection report listing each reason that the vehicle failed the emissions inspection.

(b) A notice which states the following:

"A vehicle's failure to pass the emissions inspection may be related to a malfunction covered under warranty.".

(3) Certificates of waiver shall be available at each public inspection station pursuant to section 6315.

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

Popular name: Act 451

Popular name: NREPA

324.6319 Tampering with motor vehicle.

Sec. 6319. A person shall not tamper with a motor vehicle that has been certified to comply with this part and the rules promulgated under this part so that the motor vehicle is no longer in compliance. For purposes of this part, tampering does not include the alteration of a motor vehicle by employees of the department for purposes of monitoring and enforcement of this part.

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

Popular name: Act 451

Popular name: NREPA

324.6320 Providing false information to public inspection station or department.

Sec. 6320. A person shall not provide false information to a public inspection station or the department about estimated or actual repair costs or repairs needed to bring a motor vehicle into compliance. A person shall not claim an amount spent for repair if the repairs were not made or the amount not spent.

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

Popular name: Act 451

Popular name: NREPA

324.6321 Violations as misdemeanor; fine; separate offenses.

Sec. 6321. (1) A person who violates section 6317, forges, counterfeits, or alters an inspection certificate, or knowingly possesses an unauthorized inspection certificate is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or by a fine of not more than $1,000.00. Each violation constitutes a separate offense.

(2) Except as otherwise provided in subsection (1), a person who violates section 6318, 6319, or 6320 is guilty of a misdemeanor.

(3) A person who drives a motor vehicle in violation of this part or rules promulgated under this part is subject to a civil fine of not more than $500.00. Each violation constitutes a separate offense.

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

Popular name: Act 451

Popular name: NREPA

PART 65
MOTOR VEHICLE EMISSIONS TESTING FOR SOUTHEAST MICHIGAN

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324.6501 Meanings of words and phrases.

Sec. 6501. For the purposes of this part, the words and phrases contained in sections 6502 to 6504 have the meanings ascribed to them in those sections.

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

Popular name: Act 451

Popular name: NREPA

324.6502 Definitions; C, D.

Sec. 6502. (1) "Certificate of compliance" means a serially numbered written instrument or document that is issued to the owner of a motor vehicle upon passing an inspection or reinspection and is evidence that the motor vehicle complies with the standards and criteria adopted by the department under this part.

(2) "Certificate of waiver" means a serially numbered written document or sticker indicating that the standards and criteria of the department have been met for a motor vehicle pursuant to the requirements of this part.

(3) "Clean air act" means chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q. Clean air act includes the regulations promulgated under the clean air act.

(4) "Consumer protection" means protecting the public from unfair or deceptive practices.

(5) "Cut point" means the level of pollutants emitted that is used in determining whether a particular make and model of motor vehicle passes or fails all or a part of an inspection.

(6) "Department" means the state transportation department.

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

Popular name: Act 451

Popular name: NREPA

324.6503 Definitions; E to N.

Sec. 6503. (1) "Emission control device" means a catalytic converter, thermal reactor, or other component part used by a vehicle manufacturer to reduce emissions or to comply with emission standards prescribed by regulations promulgated by the United States environmental protection agency under the clean air act.

(2) "Fleet testing station" means a testing station that is authorized to conduct inspections on 10 or more vehicles owned or leased by 1 person.

(3) "Initial inspection" means an annual inspection performed on a motor vehicle for the first time in a test cycle.

(4) "Inspection" means testing of a motor vehicle for compliance with emission control requirements of this part and the clean air act.

(5) "Maintenance" means the repair or adjustment of a motor vehicle to bring that motor vehicle into compliance with emission control requirements of this part and rules promulgated under this part.

(6) "Motor vehicle" means a self-propelled vehicle as defined in section 79 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.79 of the Michigan Compiled Laws, that has a gross vehicle weight rating of 10,000 pounds or less and which is required to be registered for use upon the public streets and highways of this state under Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws. For purposes of this part, motor vehicle includes those vehicles owned by the government of the United States, this state, and any political subdivision of this state.

(7) "National ambient air quality standards" means the air quality standards for outside air as established in the clean air act.

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

Popular name: Act 451

Popular name: NREPA

324.6504 Definitions; P to T.

Sec. 6504. (1) "Pollutants" means nitrogen oxides, carbon monoxide, hydrocarbons, and other toxic substances emitted from the operation of a motor vehicle.

(2) "Tamper with" means to remove or render inoperative, to cause to be removed or rendered inoperative, or to make less operative an emission control device or an element of an emission control device that is required by the clean air act to be installed in or on a motor vehicle.

(3) "Test cycle" means a 12-month period corresponding with the expiration date for registration of the

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vehicle.

(4) “Testing station” means a facility for motor vehicle inspection as provided in this part.

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

Popular name: Act 451

Popular name: NREPA

324.6505 Access to records; requests in writing; identification of record; reasonable charge.

Sec. 6505. (1) Access to records of the department and the department of state shall be in accordance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(2) Requests for access to records shall be in writing and shall identify the specific record.

(3) There shall be a reasonable charge for the reproduction and mailing of identifiable records.

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

Popular name: Act 451

Popular name: NREPA

324.6506 Testing or repair of motor vehicles; implementation of emissions inspection test program in Wayne, Oakland, and Macomb counties.

Sec. 6506. On and after the effective date of the 1996 amendatory act that amended this section, the owner of a motor vehicle who resides in Wayne, Oakland, or Macomb county shall not be required to have the motor vehicle tested or repaired under this act unless an emissions inspection test program is implemented under the conditions described in section 6507.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1996, Act 166, Imd. Eff. Apr. 17, 1996.

Popular name: Act 451

Popular name: NREPA

324.6507 Emissions inspection test program in Wayne, Oakland, and Macomb counties; conditions for implementation; contingency measures; adoption of cut points; equipment and test procedures; rules; suspension of vehicle registration.

Sec. 6507. (1) The department may implement and administer only under the conditions set forth in subsection (2) an emissions inspection test program designed to meet the performance standards for a motor vehicle emissions testing program as established by the United States environmental protection agency in 40 C.F.R. 51.352 in the counties of Wayne, Oakland, and Macomb, using bar 90 testing equipment, including a visual antitampering check, or an equivalent system approved by the United States environmental protection agency. This inspection and maintenance program, if implemented, shall be carried out by licensed testing stations as authorized by the department. The visual antitampering check described in this subsection includes visual antitampering inspection of the catalytic converter, gas cap, PCV valve, air pump, and fuel inlet restrictor on light duty gas vehicles and light duty gas trucks with a gross vehicle weight rating of 10,000 pounds or less.

(2) The decentralized test and repair program described in subsection (1) shall only be implemented as a contingency measure included in the maintenance plan approved by the United States environmental protection agency as part of the redesignation as an ozone attainment area. The contingency measure shall include authority to expand the program to Washtenaw county in addition to the counties described in subsection (1) if other measures are not sufficient to meet the maintenance plan. The department may only implement the contingency measure if there is observation of an actual violation of the ozone national ambient air quality standard under 40 C.F.R. 50.9 during the maintenance period. The department may only exercise the contingency measure set forth in this subsection if:

(a) The department notifies the legislature that the event set forth in this subsection has occurred and that the contingency will be implemented after a period of 45 days.

(b) The legislature fails to adopt any amendments to this part that alter the requirements of this section within the 45-day period.

(3) The cut points set forth in test procedures, quality control requirements, and equipment specifications issued by the United States environmental protection agency are hereby adopted for the emissions testing program authorized in this section.

(4) Equipment and test procedures for the program described in subsection (1) shall meet the requirements of appendices A through D to subpart S of 40 C.F.R. 51 and the test procedures, quality control requirements, and equipment specifications issued by the United States environmental protection agency.

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(5) The department, in consultation with the department of state and the department of natural resources, may promulgate rules for the administration of the inspection and maintenance program under this section including, but not limited to:

(a) Standards for testing station equipment, including emission testing equipment.

(b) Emission test cut points and other emission control requirements based on the clean air act and the state implementation plan.

(c) Exemptions from inspections as authorized under this part.

(d) Standards and procedures for the issuance of certificates of compliance and certificates of waiver from inspection and maintenance program requirements.

(e) Rules to ensure that owners of motor vehicles registered in this state who temporarily reside out of state are not unduly inconvenienced by the requirements of this part. The rules may include any of the following:

(*i*) Reciprocal agreements with other states that require motor vehicle inspections that are at least as stringent as those required under this part and rules promulgated under this part.

(*ii*) Provision for time extensions of not more than 2 years for persons temporarily residing in a state, the District of Columbia, or a territory of the United States with which this state has not entered into a reciprocal agreement for vehicle emissions inspection and maintenance. Additional time extensions shall be granted to persons temporarily residing out of state because of military service.

(6) Upon receipt of documentation from the department, the department of state may suspend the registration of any vehicle that is not in compliance with this section and the rules promulgated under this section and for which the required certificate of compliance has not been obtained.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1996, Act 166, Imd. Eff. Apr. 17, 1996.

Popular name: Act 451

Popular name: NREPA

324.6508 Motor vehicle emissions testing program fund; account.

Sec. 6508. (1) There is established a motor vehicle emissions testing program fund to be maintained as a separate fund in the state treasury and to be administered by the department. Money received and collected for motor vehicle emissions inspections and for delinquency charges under this part and from any other source shall be deposited in the state treasury to the credit of the motor vehicle emissions testing program fund.

(2) The motor vehicle emissions inspection account is created in the motor vehicle emissions testing program fund. Money in this account shall be appropriated by the legislature for the purposes of a public education program to be conducted by the department, start-up costs required to implement requirements of the motor vehicle emissions testing program under this part, administration and oversight by the department and the independent third-party organization, enforcement of the motor vehicle emissions testing program through the vehicle registration process by the department of state, gasoline inspection and testing, and other activities related to the motor vehicle emissions testing program.

(3) Funds remaining in the motor vehicle emissions testing program fund at the end of a fiscal year shall not lapse to the general fund but shall remain in the motor vehicle emissions testing program fund for appropriation in the following year.

(4) If any of the funds collected from the fee in section 6511(1) for administration and oversight including reimbursement of independent third-party organizations are appropriated or expended for any purposes other than those specifically listed in subsection (2), section 6520(2), and section 6532, the authority to collect fees granted under section 6511(1) shall be suspended until the funds appropriated or expended for purposes other than those specifically listed in subsection (2), section 6520(2), and section 6532 are returned to the fund established in subsection (1).

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

Popular name: Act 451

Popular name: NREPA

324.6509 Renewal of registration; issuance of certificate of compliance or certificate of waiver required; validity of certificate.

Sec. 6509. (1) The department of state shall not renew the registration of a motor vehicle subject to this part unless the vehicle has been inspected as provided in this part and a certificate of compliance or a certificate of waiver has been issued.

(2) Certificates of compliance and certificates of waiver issued under this part are valid for 1 test cycle.

(3) If not exempted by this part or rules promulgated under this part, a person shall not drive a motor vehicle registered in an area required to have a vehicle emission and maintenance program without a valid

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certificate of compliance or certificate of waiver.

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

Popular name: Act 451

Popular name: NREPA

324.6510 Testing station; prohibited conduct.

Sec. 6510. (1) A testing station shall not falsely represent that the motor vehicle has passed or failed an inspection or reinspection.

(2) A testing station shall not falsely represent repairs or falsely estimate the price for repairs that are necessary to allow a person to obtain a certificate of compliance or a certificate of waiver.

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

Popular name: Act 451

Popular name: NREPA

324.6511 Testing station; fee; use of fee; conditions requiring free reinspection or issuance of certificate of compliance; initial inspections; remittance and disposition of fee.

Sec. 6511. (1) A testing station may charge a person a fee of not more than $13.00. This part or the rules promulgated under this part do not prohibit a testing station from providing inspections for a fee of less than $13.00. However, the fee charged shall not be less than $3.00. Three dollars from the fee charged under this subsection shall be remitted by the testing station to the department of treasury as provided in subsection (7) and shall be used by the department for administration and oversight. One dollar from the $3.00 shall be used by the department to reimburse the independent third-party organization pursuant to section 6520. A testing station shall not make a separate charge for issuing a certificate of compliance, notice of failure, or certificate of waiver.

(2) A testing station shall provide 1 free reinspection of a motor vehicle if the motor vehicle failed a previous inspection performed by the testing station and if the motor vehicle is presented for reinspection within 90 days of the previous inspection, except that a testing station is not obligated to perform a free reinspection if the person presenting the motor vehicle for reinspection does not present the notice of failure previously issued by the testing station.

(3) A testing station that has performed repairs to bring into compliance a motor vehicle that has failed an inspection at another testing station within the previous 90 days, as evidenced by the notice of failure, shall provide to the person presenting the motor vehicle a free reinspection and shall provide a certificate of compliance for the motor vehicle if it passes the reinspection.

(4) A testing station shall provide 1 free reinspection of a motor vehicle if a fee was charged by the testing station for an initial inspection of the motor vehicle that was not completed under any condition described in the rules.

(5) Initial inspections must take place within 6 months before the expiration of the registration for the vehicle or the expiration of the certificate of compliance, time extension, or certificate of waiver issued under this part. Vehicles subject to this part that are not required to be registered in this state shall be presented for inspection during each annual inspection test cycle at a time set by the department.

(6) By the fifteenth day of each month, each testing station shall remit the amount of the fee required for administration and oversight under subsection (1) to the department of treasury for deposit in the motor vehicle emissions testing program fund.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1996, Act 166, Imd. Eff. Apr. 17, 1996.

Popular name: Act 451

Popular name: NREPA

324.6512 Vehicles exempt from inspection requirements.

Sec. 6512. The following vehicles are exempt from the inspection requirements of this part:

(a) Motor vehicles that are exempted by rules promulgated by the department because of prohibitive inspection problems or inappropriateness for inspection.

(b) A motor vehicle manufactured before the 1975 model year.

(c) A motor vehicle that has as its only fuel source compressed natural gas, diesel fuel, propane, electric power, or any other source as defined by rule promulgated by the department.

(d) A vehicle that is licensed as a historic vehicle under section 803a of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.803a of the Michigan Compiled Laws.

(e) A motorcycle.

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(f) A motor vehicle used for covert monitoring of inspection facilities.

(g) A new motor vehicle, immediately after issuance of the vehicle's first title until the next annual inspection for the vehicle model year.

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

Popular name: Act 451

Popular name: NREPA

324.6513 Motor vehicles subject to part and rules; exceptions.

Sec. 6513. (1) The motor vehicles subject to this part and the rules promulgated under this part include the following:

(a) Each registered motor vehicle for the model years 1975 and later that is owned by a person whose permanent place of residence is in a county subject to this part.

(b) All motor vehicles for the model years 1975 and later that belong to a fleet and that are predominately garaged, operated, or maintained in a county subject to this part.

(2) A vehicle identified on a certificate of title issued by the department of state as an assembled vehicle is not subject to this part and the rules promulgated under this part.

(3) A motor vehicle is not subject to this part and the rules promulgated under this part if its application for registration renewal is accompanied by both a memorandum of federal clean air act exemption issued pursuant to federal regulation and a certification by the applicant identifying the vehicle, and if the application for registration is filed with the department.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1996, Act 166, Imd. Eff. Apr. 17, 1996.

Popular name: Act 451

Popular name: NREPA

324.6514 Motor vehicles purchased as new vehicles; evidence.

Sec. 6514. Any 1 of the following shall be accepted by the department of state as evidence that a motor vehicle was purchased as a new motor vehicle within the previous 12 months:

(a) A registration or certificate of title indicating the motor vehicle is of a model year which has been offered for sale in this state for not more than 12 months.

(b) A record of the department of state indicating that the motor vehicle was purchased as new within the previous 12 months.

(c) A seller's statement to the buyer that indicates that the motor vehicle being sold is a new motor vehicle and that is dated within the previous 12 months.

(d) A manufacturer's statement of origin showing the first retail sale as being within the previous 12 months.

(e) A bill of sale from a manufacturer or a dealer franchised to sell new motor vehicles of that particular make that indicates that the motor vehicle being sold is new and that is dated within the previous 12 months.

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

Popular name: Act 451

Popular name: NREPA

324.6515 Application for motor vehicle registration as evidence of owner's permanent place of residence.

Sec. 6515. An application for a motor vehicle registration shall be accepted by the department of state as evidence of a motor vehicle owner's permanent place of residence.

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

Popular name: Act 451

Popular name: NREPA

324.6516 Inspection of motor vehicles; license to operate testing station; separate license and fee; mobile or temporary location; remote sensing devices; use of other instruments; display of license.

Sec. 6516. (1) A person shall not engage in the business of inspecting motor vehicles under this part except as authorized by a license to operate a testing station issued by the department pursuant to part 13.

(2) A person shall not be licensed to operate a testing station unless the person has an established place of business where inspections are to be performed during regular business hours, where records required by this part and the rules promulgated under this part are to be maintained, and that is equipped with an instrument or

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instruments of a type that comply with and are capable of performing inspections of motor vehicles under this part.

(3) A person licensed as a testing station shall perform inspections under this part at the established place of business for which the person is licensed. A person shall inform the department immediately of a change in the address of an established place of business at which the person is licensed as a testing station.

(4) A person shall obtain a separate license and pay a separate fee for each established place of business at which a testing station is to be operated.

(5) A testing station may establish and operate mobile or temporary testing station locations if they meet all of the following conditions:

(a) The instrument used at the mobile or temporary location is capable of meeting the performance specifications for instruments set forth in rules promulgated under this part while operating in the mobile or temporary station environment.

(b) The owner of a motor vehicle inspected at the mobile or temporary location shall be provided with a free reinspection of the motor vehicle, at the established place of business of the testing station or at any mobile or temporary testing station location operated by the testing station.

(c) Personnel at the licensed established place of business location shall, at all times, know the location and hours of operation of the mobile or temporary testing station or stations.

(d) The records required by this part and the rules promulgated under this part relating to inspections performed and the instrument or instruments used at a mobile or temporary testing station shall be maintained at a single established place of business that is licensed as a testing station.

(e) The documents printed as required by the rules promulgated under this part by an instrument used at a mobile or temporary testing station location shall contain the testing station number and the name, address, and telephone number of the testing station's established place of business.

(6) A testing station may use remote sensing devices as a complement to testing otherwise required by this part.

(7) A testing station shall not cause or permit an inspection of a motor vehicle to be performed by a person other than an emission inspector using an instrument of a type that complies with the rules promulgated under this part.

(8) A testing station shall display a valid testing station license issued by the department in a place and manner conspicuous to its customers.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1996, Act 166, Imd. Eff. Apr. 17, 1996;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.6517 Testing station license; application; information; fee; effective date and duration of license; reinstatement of surrendered, revoked, or expired repair facility registration; resumption of operation.

Sec. 6517. (1) An application for a testing station license shall include a description of the business to be licensed. The description shall include, in addition to other information required by this part and the rules promulgated under this part, all of the following:

(a) The repair facility registration number issued to the applicant if the applicant is licensed under the motor vehicle service and repair act, 1974 PA 300, MCL 257.1301 to 257.1340.

(b) The name of the business and the address of the business location for which a testing station license is being sought.

(c) The name and address of each owner of the business in the case of a sole proprietorship or a partnership and, in the case of a corporation, the name and address of each officer and director and of each owner of 25% or more of the corporation.

(d) The name of and identification number issued by the department for each emission inspector employed by the applicant.

(e) A description, including the model and serial number, of each instrument to be used by the applicant to perform inspections or reinspections under this part and the rules promulgated under this part and the date the instrument was purchased by the applicant.

(f) The estimated capacity of the applicant to perform inspections.

(2) The fee for a testing station license is $50.00 and shall accompany the application for a license submitted to the department.

(3) A testing station license shall take effect on the date it is approved by the department and shall remain in effect until this part expires, the license is surrendered by the station, revoked or suspended by the

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department, or until the motor vehicle repair facility registration of the business has been revoked or suspended by the department of state, surrendered by the facility, or has expired without timely renewal.

(4) If a testing station license has expired by reason of surrender, revocation, or expiration of repair facility registration, the business shall not resume operation as a testing station until the repair facility registration has been reinstated and a new, original application for a testing station license has been received and approved by the department and a new license fee paid.

(5) When the repair facility registration has been suspended, the testing station may resume operation without a new application when the repair facility registration suspension has ended.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1996, Act 166, Imd. Eff. Apr. 17, 1996;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.6518 Testing station; change of ownership; notice.

Sec. 6518. (1) If the ownership of a testing station changes, a new original license and payment of a new license fee is required, and the station shall not operate until its application is approved by the department. For the purposes of this section, "change of ownership" means a change in the ownership of a station which is either a sole proprietorship or a partnership; the replacement of a sole proprietorship with a partnership, a corporation, or another sole proprietorship; the replacement of a partnership with a sole proprietorship, a corporation, or another partnership; or the replacement of a corporation with a sole proprietorship, a partnership, or another corporation.

(2) A corporation shall notify the department within 30 days of a change in ownership that involves the accumulation of 25% or more of the ownership by a person who did not previously own 25% or more of the corporation.

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

Popular name: Act 451

Popular name: NREPA

324.6519 Display of certain information; prohibited conduct.

Sec. 6519. (1) A testing station shall display at the established place of business an information sign that bears an identifying symbol developed by the department and is worded as follows: "OFFICIAL EMISSION TESTING STATION".

(2) The sign shall be displayed on the outside premises of the testing station so that it is clearly and readily visible and readable to persons in motor vehicles as they enter the testing station property.

(3) A testing station shall also conspicuously display the price charged by the station for an inspection preceded by a dollar sign and printed in Arabic numerals.

(4) A testing station shall maintain posted business hours during which time representatives of the independent third party required to make certifications of the equipment used by the testing station and the emission inspectors used by the testing station may conduct inspections of the station, instruments and records required by this part and the rules promulgated under this part, and the motor vehicle emission inspection procedures employed by the testing station.

(5) A testing station shall not hinder, obstruct, or otherwise prevent an inspection required by this part.

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

Popular name: Act 451

Popular name: NREPA

324.6520 Testing station; certification by third-party organization.

Sec. 6520. (1) A testing station shall submit annually to the department evidence of certification of its testing equipment and emission inspectors by an independent third-party organization. The certification shall provide that the testing equipment and emission inspectors meet the requirements of this part and the rules promulgated under this part and the requirements of the clean air act. If deficiencies are noted by the third-party certifying organization, the testing station shall submit a written explanation of corrective action accepted by the third-party organization with the certification.

(2) The department shall contract with the third-party organization to establish a random inspection system for testing stations. Funds from the fee imposed pursuant to section 6511 shall be used for this purpose.

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

Popular name: Act 451

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Popular name: NREPA

324.6521 Fleet testing station; permit; requirements.

Sec. 6521. (1) A fleet owner or lessee shall not perform inspections under this part or the rules promulgated under this part except as authorized under a permit to operate a fleet testing station issued by the department pursuant to part 13.

(2) A person shall not receive a permit to operate a fleet testing station unless the person has an established location where inspections are to be performed, where records required by this part and the rules promulgated under this part are to be maintained, that is equipped with an instrument or instruments of a type that comply with this part or the rules promulgated under this part, and that is capable of performing inspections of motor vehicles under this part and the rules promulgated under this part.

(3) A person with a permit to operate a fleet testing station shall perform inspections under this part and the rules promulgated under this part only at the established location for which the person has the permit. A person shall inform the department immediately of a change in the address of the established location for which the person has a permit to operate a fleet testing station.

(4) A fleet testing station shall not cause or permit an inspection of a motor vehicle to be performed by a person other than an emission inspector using an instrument of a type that complies with the rules promulgated under this part.

(5) An application for a fleet testing station shall include a description of the operation to be licensed. The description shall include, in addition to other information required by this part and the rules promulgated under this part, all of the following:

(a) The name of the business and the address of the location for which a fleet testing station permit is being sought.

(b) The name and address of each owner of the business in the case of a sole proprietorship or a partnership and, in the case of a corporation, the name and address of each officer and director and of each owner of 25% or more of the corporation.

(c) The name of and identification number issued by the department for each emission inspector employed by the applicant.

(d) A description, including the model and serial number of each instrument to be used by the applicant to perform inspections or reinspections under this part and the rules promulgated under this part, and the date the equipment was purchased by the applicant.

(e) A description of the fleet to be inspected, including the number and types of motor vehicles.

(f) A statement signed by the applicant certifying that the applicant maintains and repairs, on a regular basis, the fleet vehicles owned by the applicant.

(6) A fleet testing station permit shall take effect on the date it is approved by the department and shall expire 1 year from that date. A fleet testing station permit shall be renewed automatically, unless the fleet testing station informs the department not to renew it or unless the department has revoked the permit.

(7) A person shall obtain a separate permit for each location at which fleet inspections are performed.

(8) By the fifteenth day of each month, each fleet testing station shall remit $1.00 for each vehicle inspected during the preceding month to the department of treasury for deposit in the motor vehicle emissions testing program fund.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.6522 Fleet testing station; change of ownership; notice.

Sec. 6522. (1) If the ownership of a fleet testing station changes, a new permit is required, and the fleet testing station shall not operate until its application for a new permit is approved by the department. For purposes of this section, “change of ownership” means a change in the ownership of a station that is a sole proprietorship or a partnership; the replacement of a sole proprietorship with a partnership, a corporation, or another sole proprietorship; the replacement of a partnership with a sole proprietorship, a corporation, or another partnership; or the replacement of a corporation with a sole proprietorship, a partnership, or another corporation.

(2) A corporation shall notify the department within 30 days of any change in ownership that involves the accumulation of 25% or more of the ownership by a person who did not previously own 25% or more of the corporation.

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

Popular name: Act 451

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Popular name: NREPA

324.6523 Fleet testing station; limitation.

Sec. 6523. A fleet testing station shall perform inspections under this part and the rules promulgated under this part only upon its own fleet motor vehicles, unless separately licensed as a testing station.

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

Popular name: Act 451

Popular name: NREPA

324.6524 Fleet testing station; inspection by independent third party; prohibited conduct.

Sec. 6524. (1) A fleet testing station, its records, equipment required by this part and the rules promulgated under this part, and the motor vehicle emission inspection procedures employed by the fleet testing station shall be open to inspection by an independent third party as otherwise required by this part.

(2) A fleet testing station shall not hinder, obstruct, or otherwise prevent an inspection required by this part.

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

Popular name: Act 451

Popular name: NREPA

324.6525 False representations.

Sec. 6525. A fleet testing station shall not falsely represent that a motor vehicle has passed or failed an inspection or reinspection.

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

Popular name: Act 451

Popular name: NREPA

324.6526 Fleet testing station; issuance of certificate of compliance.

Sec. 6526. A fleet testing station shall issue a certificate of compliance for a vehicle that has passed an inspection or reinspection or received a low emission tune-up.

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

Popular name: Act 451

Popular name: NREPA

324.6527 Inspection appointment; issuance of certificate of compliance; report describing reason for rejection.

Sec. 6527. (1) A person shall not be required to make an appointment for a vehicle inspection.

(2) A testing station shall inspect and reinspect motor vehicles in accordance with this part and the rules promulgated under this part by the department. The station shall issue a certificate of compliance for a motor vehicle that has been inspected and determined to comply with the standards and criteria of the department pursuant to the rules promulgated under this part. If a certificate of compliance is not issued, the inspection station shall provide a written inspection report describing the reason for rejection.

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

Popular name: Act 451

Popular name: NREPA

324.6528 Certificate of waiver; issuance; conditions; certain costs not considered in determining eligibility; criteria; temporary certificate; fee.

Sec. 6528. (1) A certificate of waiver shall be issued for a motor vehicle that fails an initial inspection and a subsequent reinspection if the actual cost of maintenance already performed and designed to bring the vehicle into compliance with clean air standards in accordance with the inspection report is at least $200.00, adjusted in January of each year by the increase or decrease in the Detroit consumer price index and rounded off to the nearest whole dollar.

(2) The costs covered by vehicle warranty and the costs necessary to repair or replace any emission control equipment that has been removed, dismantled, tampered with, misfueled, or otherwise rendered inoperative shall not be considered in determining eligibility for a certificate of waiver pursuant to subsection (1).

(3) Except for the program described in section 6506, issuance of a certificate of waiver shall be conditioned upon meeting the criteria established by regulations promulgated by the United States environmental protection agency in 40 C.F.R. 51.360.

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(4) A temporary certificate of waiver, valid for not more than 14 days, may be issued to the owner of a motor vehicle by the secretary of state to allow time for necessary maintenance and reinspection. The secretary of state may charge the fee permitted for a temporary registration under section 802(5) of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.802 of the Michigan Compiled Laws.

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

Popular name: Act 451

Popular name: NREPA

324.6529 Approval as emission inspector.

Sec. 6529. (1) A person shall not perform inspections under this part or the rules promulgated under this part unless the person receives approval from the department as an emission inspector.

(2) Before a person is approved as an emission inspector, the person shall have passed an examination approved by the department that is designed to test the person's competency to perform inspections.

(3) A person who fails an examination to obtain approval as an emission inspector may retake the examination when it is next offered.

(4) A person's approval by the department as an emission inspector shall take effect on the date it is issued by the department and shall expire upon surrender by the person or upon revocation by the department.

(5) The department, after notice and opportunity for a hearing, may deny, suspend, or revoke a person's approval as an emission inspector if the department finds that an applicant or an emission inspector does any of the following:

(a) Commits fraud, misrepresentation, trickery, or deceit in connection with the inspection or repair of a motor vehicle under this part or a rule promulgated under this part.

(b) Violates this part or a rule promulgated under this part.

(c) Improperly performs an instrument maintenance, recordkeeping, or inspection procedure required by the rules promulgated under this part.

(d) Incompetently performs an inspection.

(e) Is denied certification by the independent third party responsible for certifications under this part.

(6) Instead of proceeding under subsection (5), or as a means of settling a matter pursuant under subsection (5), the department may do any of the following:

(a) Enter into an assurance of discontinuance with an applicant or an emission inspector.

(b) Enter into a probation agreement with an applicant or an emission inspector.

(c) Enter into a suspension, revocation, or denial agreement with an applicant or an emission inspector.

(d) Require an applicant or an emission inspector to take training or an examination, or both.

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

Popular name: Act 451

Popular name: NREPA

324.6530 Inspection; certificate of compliance or waiver obtained at licensed testing station.

Sec. 6530. Unless the person is licensed as a fleet testing station, a person who owns a motor vehicle required to be inspected under this part and the rules promulgated under this part shall have the motor vehicle inspected and shall obtain a certificate of compliance or a waiver only at a testing station licensed under this part and the rules promulgated under this part.

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

Popular name: Act 451

Popular name: NREPA

324.6531 Compliance; determination by department; system for selection of qualified vehicles.

Sec. 6531. The department may issue a certificate of compliance for a motor vehicle when the department makes a determination that the motor vehicle complies with the requirements of this part and the rules promulgated under this part. The department shall establish a system for selecting which motor vehicles qualify for the department's determination as to compliance.

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

Popular name: Act 451

Popular name: NREPA

324.6532 Protection of public from fraud and abuse; quality assurance; evaluation of cost;

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effectiveness and benefits of inspection program; report.

Sec. 6532. (1) The department shall institute procedures and mechanisms to protect the public from fraud and abuse by inspectors, mechanics, and others involved in the inspection and maintenance program. These procedures and mechanisms shall include a challenge mechanism by which a vehicle owner can contest the results of an inspection. It shall include mechanisms for protecting whistleblowers and following up on complaints by the public or others involved in the process. It shall include a program to assist owners in obtaining warranty covered repairs for eligible vehicles that fail a test.

(2) The department shall provide quality assurance for the inspection and maintenance program established under this part through certification of competency by a third party to ensure proper and accurate emission inspection results. The third party each year shall certify the testing equipment and the emission inspectors employed by a testing station.

(3) The department shall compile data and undertake studies necessary to evaluate the cost, effectiveness, and benefits of the motor vehicle inspection program. The department shall compile data on failure rate, compliance rate, the number of certificates issued, and other similar matters in accordance with 40 C.F.R. 51.365 and 51.366. The department shall make an annual report on the operation of the motor vehicle inspection program to the standing committees of the legislature that primarily address issues pertaining to public health or protection of the environment by January 1, 1995, and each year thereafter.

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

Popular name: Act 451

Popular name: NREPA

324.6533 Testing station; fleet testing station; issuance of certificate of compliance; conditions.

Sec. 6533. A testing station or a fleet testing station shall not issue a certificate of compliance for a motor vehicle that has not been inspected and has not met or exceeded emission cut points established by the department in accordance with this part and the rules promulgated under this part.

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

Popular name: Act 451

Popular name: NREPA

324.6534 Information to be provided by public inspection station; availability of certificate of waiver.

Sec. 6534. (1) An employee, owner, or operator of a public inspection station shall not furnish information, except information provided by the state or otherwise required by this part, about the name or other description of a repair facility or other place where maintenance may be obtained.

(2) Each testing station shall furnish the following information upon failure of the vehicle to pass inspection:

(a) A written inspection report listing each reason that the vehicle failed the emissions inspection.

(b) A notice that states the following:

“A vehicle's failure to pass the emissions inspection may be related to a malfunction covered under warranty.”.

(3) Certificates of waiver shall be available at each public inspection station pursuant to section 6528.

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

Popular name: Act 451

Popular name: NREPA

324.6535 Tampering with motor vehicle.

Sec. 6535. A person shall not tamper with a motor vehicle that has been certified to comply with this part and the rules promulgated under this part so that the motor vehicle is no longer in compliance. For purposes of this part, tampering does not include the alteration of a motor vehicle by employees of the department for purposes of monitoring and enforcement of this part.

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

Popular name: Act 451

Popular name: NREPA

324.6536 Providing false information about repair costs prohibited.

Sec. 6536. A person shall not provide false information to a public inspection station or the department

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about estimated or actual repair costs or repairs needed to bring a motor vehicle into compliance. A person shall not claim an amount spent for repair if the repairs were not made or the amount not spent.

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

Popular name: Act 451

Popular name: NREPA

324.6537 Violations as misdemeanor; fine.

Sec. 6537. (1) A person who violates section 6533 or forges, counterfeits, or alters an inspection certificate or who knowingly possesses an unauthorized inspection certificate, is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or by a fine of not more than $1,000.00. Each violation constitutes a separate offense.

(2) Except as otherwise provided in subsection (1), a person who violates section 6534, 6535, or 6536 is guilty of a misdemeanor.

(3) A person who drives a motor vehicle in violation of this part or rules promulgated under this part is subject to a civil fine of not more than $500.00. Each violation constitutes a separate offense.

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

Popular name: Act 451

Popular name: NREPA

324.6538 Transfer and availability of vehicle emissions inspection and maintenance fund.

Sec. 6538. Funds remaining in the vehicle emissions inspection and maintenance fund created by former Act No. 83 of the Public Acts of 1980 shall be transferred on January 1, 1996 to the motor vehicle emissions testing program fund created in this part. These funds shall be available for appropriation to the department for start-up costs to implement the motor vehicle emissions testing program in this part, to conduct a public information program to educate the general public about requirements of this part, and for other activities related to the motor vehicle emissions testing program.

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

Popular name: Act 451

Popular name: NREPA

324.6539 Repeal of MCL 257.1051 to 257.1076.

Sec. 6539. Act No. 83 of the Public Acts of 1980, being sections 257.1051 to 257.1076 of the Michigan Compiled Laws, is repealed January 1, 1996.

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

Popular name: Act 451

Popular name: NREPA

CHAPTER 2
NONPOINT SOURCE POLLUTION CONTROL

PART 81
GENERAL NONPOINT SOURCE POLLUTION CONTROL

PART 82
CONSERVATION PRACTICES

324.8201 Definitions.

Sec. 8201. As used in this part:

(a) “Conservation easement” means that term as it is defined in section 2140.

(b) “Conservation plan” means a plan approved by the department for all or a portion of a parcel of land that specifies the conservation practices to be undertaken and includes a schedule for implementation.

(c) “Conservation practices” means practices, voluntarily implemented by the landowner, that protect and conserve water quality, soil, natural features, wildlife, or other natural resources and that meet 1 or more of the following:

(*i*) The practices comply with United States natural resource conservation service standards and specifications as approved by the department.

(*ii*) The practices are provided in rules promulgated by the department under this part.

(*iii*) The practices have been approved by the commission of agriculture.

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(d) “Department” means the department of agriculture or its authorized representatives.

(e) “Fund” means the agriculture pollution prevention fund created in section 8206.

(f) “Verification” or “verify” means a determination by the department that 1 or more conservation practices have been established and are being maintained in accordance with a conservation plan.

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

Popular name: Act 451

Popular name: NREPA

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

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

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

(a) Enter into contracts with 1 or more persons for the implementation of conservation practices on his or her land.

(b) Enter into contracts or other agreements with 1 or more persons to administer or promote conservation programs, or to implement conservation practices.

(c) Provide payments, financial incentives, or, upon verification of the implementation of conservation practices, reimbursement for rental payments or for costs of conservation practice implementation, or both.

(d) Promote the use of conservation practices.

(e) Recognize and provide awards for persons who have implemented conservation practices.

(f) Monitor and verify compliance with conservation plans.

(g) Enforce contracts or other agreements entered into under this part.

(h) Terminate contracts or other agreements entered into under this part in accord with terms established in the contract or other agreement.

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

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

Popular name: Act 451

Popular name: NREPA

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

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

(a) The person has submitted a conservation plan in compliance with requirements of the department.

(b) The person has established and is maintaining all conservation practices provided for in the conservation plan, according to the plan schedule.

(c) The person has agreed to allow the department, after giving prior notice to the landowner, to conduct inspections of the applicable land and facilities.

(d) The department has conducted an on-site inspection of the conservation practices and has determined that the person has established and is maintaining all conservation practices provided for in the conservation plan, according to the plan schedule.

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

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

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

Popular name: Act 451

Popular name: NREPA

324.8204 Conservation easements.

Sec. 8204. (1) The department may purchase or otherwise acquire conservation easements in accordance

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

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

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

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

Popular name: Act 451

Popular name: NREPA

324.8205 Disposition of recovered money.

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

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

Popular name: Act 451

Popular name: NREPA

324.8206 Agriculture pollution prevention fund.

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

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

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

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

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

(b) For payments required under contracts entered into under this part.

(c) For the purchase of conservation easements.

(d) For monitoring and enforcement of conservation easements.

(e) For awards to participants in conservation programs established by the department under this part.

(f) For the promotion of conservation programs established by the department under this part.

(g) Not more than 20% of the annual appropriations from the fund for the administrative costs of the department in implementing this part. As used in this subdivision, administrative costs include, but are not limited to, costs incurred in doing 1 or more of the following:

(*i*) Developing and implementing conservation programs.

(*ii*) Managing payments and financial incentives.

(*iii*) Monitoring and verifying the implementation of conservation practices and enforcing contracts or agreements concerning conservation practices.

(*iv*) Coordinating conservation programs with the United States department of agriculture and other state agencies with jurisdiction over conservation programs.

(5) The department shall annually prepare and submit to the standing committees of the senate and house of representatives with jurisdiction over issues related to agriculture and the senate and house of representatives appropriations committees a report that includes all of the following:

(a) The amount of money received by the fund during the previous fiscal year.

(b) The expenditures of money from the fund during the previous fiscal year broken down by the categories listed in subsection (4)(a) to (g).

(c) The balance of the fund on the date of the report.

(d) The number of acres in which conservation practices have been implemented.

(e) The number of acres in which conservation easements have been purchased or acquired.

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

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Popular name: Act 451

Popular name: NREPA

324.8207 Confidentiality; exemption from freedom of information act.

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

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

Popular name: Act 451

Popular name: NREPA

324.8208 Rules.

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

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

Popular name: Act 451

Popular name: NREPA

PART 83
PESTICIDE CONTROL

324.8301 Meanings of words and phrases.

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

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

Popular name: Act 451

Popular name: NREPA

324.8302 Definitions; A to C.

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

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

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

(4) "Agricultural commodity" means a plant or part of a plant, or an animal or animal product, produced primarily for sale, consumption, propagation, or other use by human beings or animals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002;—Am. 2008, Act 18, Imd. Eff. Feb. 29, 2008.

Popular name: Act 451

Popular name: NREPA

324.8303 Definitions; D to G.

Sec. 8303. (1) "Day care center" means a facility, other than a private residence, receiving 1 or more preschool or school-age children for care for periods of less than 24 hours a day, and where the parents or guardians are not immediately available to the child, and which is licensed as a child care organization by the department of human services under 1973 PA 116, MCL 722.111 to 722.128.

(2) "Defoliant" means a substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(3) "Department" means the department of agriculture.

(4) "Desiccant" means a substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(5) "Device" means an instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating a pest; but does not include equipment used for the application of pesticides when sold separately.

(6) "Direct supervision" means directing the application of a pesticide while being physically present during the application. However, direct supervision by a private agricultural applicator means either of the following:

(a) The private agricultural applicator is in the same field or location as an uncertified applicator, directing the application of a restricted use pesticide by the uncertified applicator.

(b) The private agricultural applicator supervises an uncertified applicator and is physically present during the initial restricted use pesticide application on an agricultural commodity or agricultural structure, including calibration, mixing, application, operator safety, and disposal.

(7) "Director" means the director of the department or his or her authorized representative.

(8) "Distribute" means to offer for sale, hold for sale, sell, barter, ship, inventory or receive for others for a period greater than 21 days, or deliver pesticides in this state.

(9) "Envelope monitoring" means monitoring of groundwater in areas adjacent to properties where groundwater is contaminated to determine the concentration and spatial distribution of the contaminant in the aquifer.

(10) "Environment" includes water, air, land, and all plants and human beings and other animals living therein, and the interrelationships that exist among them.

(11) "EPA" means the United States environmental protection agency.

(12) "FIFRA" means the federal insecticide, fungicide, and rodenticide act, 7 USC 136 to 136y.

(13) "Fungi" means all nonchlorophyll bearing thallophytes; that is, all nonchlorophyll bearing plants of a lower order than mosses and liverworts, as for example rusts, smuts, mildews, molds, yeasts, and bacteria, except those in or on other animals, and except those in or on processed foods, beverages, or pharmaceuticals.

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(14) "General use pesticide" means a pesticide that is not a restricted use pesticide.

(15) "Groundwater" means underground water within the zone of saturation.

(16) "Groundwater protection rule" means a rule promulgated under this part that specifies a minimum operational standard for structures, activities, and procedures that may have contributed or may contribute to the contamination of groundwater and that specifies the standard's scope, region of implementation, and implementation period. As used in this subsection:

(a) "Structures, activities, and procedures" includes, but is not limited to, mixing, loading, and rinse pads, application equipment, application timing, application rates, crop rotation, and pest control thresholds.

(b) "Scope" means applicability to a particular pesticide, structure, activity, or procedure or pesticides containing specific ingredients.

(c) "Region of implementation" may include specific soil types or aquifer sensitivity regions or any other geographic boundary.

(17) "Groundwater resource protection level" means a maximum contaminant level, health advisory level, or, if the EPA has not established a maximum contaminant level or a health advisory level, a level established by the director of community health using risk assessment protocol established by rule under this part.

(18) "Groundwater resource response level" means 20% of the groundwater resource protection level. If 20% of the groundwater resource protection level is less than the method detection limit, the method detection limit is the groundwater resource response level.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002;—Am. 2004, Act 24, Imd. Eff. Mar. 10, 2004;—Am. 2008, Act 18, Imd. Eff. Feb. 29, 2008.

Popular name: Act 451

Popular name: NREPA

324.8304 Definitions; I to M.

Sec. 8304. (1) “Inert ingredient” means an ingredient that is not active.

(2) “Ingredient statement” means:

(a) A statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide.

(b) When the pesticide contains arsenic in any form, the ingredient statement shall include percentages of total and water soluble arsenic, each calculated as elemental arsenic.

(3) “Insect” means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising 6-legged, usually winged forms, as for example beetles, bugs, bees, and flies, and to other allied classes or arthropods whose members are wingless and usually have more than 6 legs, as for example spiders, mites, ticks, centipedes, and wood lice.

(4) “Insecticide” means a pesticide intended for preventing, destroying, repelling, or mitigating an insect.

(5) “Integrated pest management” means a pest management system that uses all suitable techniques in a total management system to prevent pests from reaching unacceptable levels or to reduce existing pest populations to acceptable levels.

(6) “Integrated pest management program” means a program for integrated pest management that includes at least all of the following elements:

(a) The following integrated pest management practices and principles:

(*i*) Site evaluation, including site description, inspection, and monitoring and the concept of threshold levels.

(*ii*) Consideration of the relationship between pest biology and pest management methods.

(*iii*) Consideration of all available pest management methods, including population reduction techniques, such as mechanical, biological, and chemical techniques and pest prevention techniques, such as habitat modification.

(*iv*) Pest control method selection, including consideration of the impact on human health and the environment.

(*v*) Continual evaluation of the integrated pest management program to determine the program's effectiveness and the need for program modification.

(b) Recordkeeping which shall be maintained by the applicator and which shall include all of the following:

(*i*) The site address.

(*ii*) The date of service.

(*iii*) The target pest or pests.

(*iv*) The inspection report, including the number of pests found or reported, and the conditions conducive

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to pest infestation.

(*v*) The pest management recommendations made by the applicator, such as structural or habitat modification.

(*vi*) The structural or habitat modification or other measures that were initiated as a part of the pest management program.

(*vii*) The name of each pesticide used.

(*viii*) Quantity of each pesticide used.

(*ix*) The location of the area or room or rooms where pesticides were applied.

(*x*) The name of the applicator.

(*xi*) The name of the pest control firm, if a firm is employed, and the emergency telephone number.

(c) Provision of the following information to the building manager:

(*i*) The integrated pest management program and initial service inspection record, which shall be provided at the time of, or made available electronically within 48 hours after, the initial service.

(*ii*) A record that includes the information specified in subdivision (b), which shall be provided upon or made available electronically within 48 hours after the completion of each inspection, application, or service call.

(d) The acceptance of responsibility by the building manager to post signs provided by the pesticide applicator in compliance with rules promulgated under section 8325.

(7) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device or any of its containers or wrappers.

(8) "Labeling" means the label and all other written, printed, or graphic matter accompanying the pesticide or device, or to which reference is made on the label or in literature accompanying the pesticide or device, and all applicable modifications or supplements to official publications of the EPA, the United States departments of agriculture and interior, the United States departments of education and health and human services, state experiment stations, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(9) "Maximum contaminant level" means that term as it is defined in title XIV of the public health service act, 42 USC 300f to 300j-25, and regulations promulgated under that act.

(10) "Method detection limit" means the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than 0 and is determined from analysis of a sample in a given matrix that contains the analyte.

(11) "Minor use" means the use of a pesticide on a crop, animal, or site where any of the following exist:

(a) The total United States acreage for the crop or site is less than 300,000 acres.

(b) The acreage expected to be treated nationally as a result of that use is less than 300,000 acres annually.

(c) The use does not provide sufficient economic incentive to support the initial registration or continuing registration of the use.

(12) "Misbranded" applies to any pesticide or device if it is an imitation of or is offered for sale under the name of another pesticide, or if its labeling does not comply with labeling requirements of this part, the rules promulgated under this part, FIFRA, or regulations promulgated under FIFRA.

(13) "Molluscicide" means a pesticide intended for preventing, destroying, repelling, or mitigating a mollusk.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002;—Am. 2004, Act 24, Imd. Eff. Mar. 10, 2004.

Popular name: Act 451

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

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liquid chemical sterilant products, including any sterilant or subordinate disinfectant claims on such products, for use on a critical or semi-critical device, as defined in section 201 of the federal food, drug, and cosmetic act, chapter 675, 52 Stat. 1040, 21 U.S.C. 321. As used in this subsection:

(a) "Critical device" includes any device that is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body.

(b) "Semi-critical device" includes any device that contacts intact mucous membranes but that does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body.

(5) "Pesticide registration renewal" means the registration of any pesticide that was previously registered by the department.

(6) "Place of business" means a location that is staffed by at least 1 person who independently, without supervision, sells or uses pesticides within this state or where a person exercises the right to control others in the sale or use of pesticides within this state.

(7) "Plant regulator" means a substance or mixture of substances intended through physiological action for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of plants or the produce of plants. Plant regulator does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(8) "Private agricultural applicator" means a certified applicator who uses or supervises the use of a restricted use pesticide for a private agricultural purpose.

(9) "Private agricultural purpose" means the application of a pesticide for the production of an agricultural commodity on either of the following:

(a) Property owned or rented by the person applying the pesticide or by his or her employer.

(b) Property of another person if applied without compensation, other than trading of personal services between producers of agricultural commodities.

(10) "Protect health and environment" means protection against any unreasonable adverse effects on the environment.

(11) "Public building" means a building that is owned or operated by a federal, state, or local government, including public universities.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8306 Definitions; R to W.

Sec. 8306. (1) "Registered applicator" means an individual who is authorized to apply general use pesticides for a private or commercial purpose as provided in this part and in the rules promulgated under this part.

(2) "Ready-to-use pesticide" means a pesticide that is applied directly from its original container consistent with label directions, such as an aerosol insecticide or rodenticide bait pack that does not require mixing or loading prior to application.

(3) "Registrant" means a person who is required to register a pesticide pursuant to this part.

(4) "Restricted use pesticide" means a pesticide classified for restricted use by the EPA or the director.

(5) "Restricted use pesticide dealer" means a person engaged in distributing, selling, or offering for sale restricted use pesticides to the ultimate user.

(6) "Rodenticide" means a pesticide intended for preventing, destroying, repelling, or mitigating rodents.

(7) "School" means public and private schools, grades kindergarten through the twelfth grade, but does not include a home school.

(8) "Supervise" means directing the application of a pesticide with or without being physically present during the application.

(9) "Unreasonable adverse effect on the environment" means any unreasonable risk to human beings or the environment, taking into account the economic, social, and environmental costs and benefits of the use of a pesticide.

(10) "Use of a pesticide" means the loading, mixing, applying, storing, transporting, and disposing of a pesticide.

(11) "Vendor" means a person who sells or distributes pesticides.

(12) "Violates this part" or "violation of this part" means a violation of this part, a rule promulgated under this part, or an order issued under this part.

(13) "Weed" means a plant which grows where it is not wanted.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002;—Am. 2004, Act 24, Imd. Eff. Mar. 10,

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2004.

Popular name: Act 451

Popular name: NREPA

324.8307 Repealed. 2002, Act 418, Imd. Eff. June 5, 2002.

Compiler's note: The repealed section pertained to procedures for registration of pesticides.

Popular name: Act 451

Popular name: NREPA

324.8307a Pesticide; distribution, sale, exposure, or offer for sale; registration required.

Sec. 8307a. (1) Every pesticide distributed, sold, exposed, or offered for sale in this state shall be registered with the director pursuant to this part. The registration shall be submitted on a form provided by the director and shall be renewed annually before July 1. The director shall not register a pesticide under this part unless the registrant has paid all water quality protection fees and late fees required under part 87, registration fees under this part, and any administrative fines imposed under this part.

(2) A pesticide is considered distributed, sold, exposed, or offered for sale in this state when the offer to sell either originates within this state or is directed by the offeror to persons in this state and received by those persons.

(3) If a registrant distributes identical pesticides under more than 1 brand name, or distributes more than 1 pesticide formulation, each brand or formulation shall be registered as a separate product.

(4) A registrant shall not register a pesticide that contains a substance that is required to be registered with the department unless that substance is also registered with the department.

(5) A pesticide registration applicant shall submit to the director a complete copy of the pesticide labeling and the following, in a format prescribed by the director:

(a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant.

(b) The full product name of the pesticide and the EPA registration number.

(c) Other information considered necessary by the director.

(6) The applicant shall submit a complete formula of the pesticide proposed for registration, including the active and inert ingredients, when requested by the director and necessary for the director to execute his or her duties under this part. The director shall not use any information relative to formulas of products, trade secrets, or other information obtained under this part for his or her own advantage or reveal such information, other than to his or her authorized representative, the EPA, the department of environmental quality, the department of health and human services, a court of the state in response to a subpoena, a licensed physician, or in an emergency to a pharmacist or other persons qualified to administer antidotes.

(7) A registrant that operates from a business location outside this state shall do either of the following:

(a) Continuously maintain in this state a registered office and a resident agent, which agent may be an individual resident in this state whose business office or residence is identical with the registered office, a domestic corporation or limited liability company, or a foreign corporation or limited liability company authorized to transact business in this state and having a business office identical with the registered office. The registrant shall file with the department the name, address, and telephone number of the resident agent and shall maintain and make available records required by this part and part 87.

(b) Maintain and make available to the department records required by this part and part 87 and pay all costs incurred by the department in auditing the records if they are held at an out-of-state location.

History: Add. 2002, Act 418, Imd. Eff. June 5, 2002;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8307b Maintenance of registration; renewal; discontinuing registration.

Sec. 8307b. (1) A pesticide that has been registered with the department must continue to be registered as long as the pesticide remains in the channels of trade in this state. It is the registrant's responsibility to maintain the pesticide registration.

(2) It is a violation of this part to continue to distribute a pesticide for which a renewal application, including the required fee, has not been received by the director on or before the last day in June. It is the responsibility of the registrant to obtain and submit an application for renewal of a pesticide registration before the expiration date.

(3) A registrant who intends to discontinue a pesticide registration shall do either of the following:

(a) Terminate further distribution within the state and continue to register the pesticide annually for 2

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successive years.

(b) Initiate a recall of the pesticide from distribution in the state prior to the expiration of the registration of the pesticide. Pesticides that do not go through a 2-year discontinuance period and that are found in the channels of trade are subject to registration penalties and all related fees since the product's last year of registration.

History: Add. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8307c Registration of pesticide; exception.

Sec. 8307c. Registration is not required under this part if a pesticide is shipped from 1 plant or warehouse to another plant or warehouse operated by the same person and used to make a pesticide that is registered under this part, or if the pesticide is distributed pursuant to an EPA experimental use permit.

History: Add. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8307d Prohibited claims.

Sec. 8307d. (1) No person who uses, distributes, exposes, or offers to sell a pesticide shall make claims that the pesticide can be used on sites that are not included in the pesticide labeling.

(2) No person who uses, distributes, exposes, or offers to sell a pesticide shall make claims that the pesticide has characteristics, ingredients, uses, benefits, or qualities that it does not have or that are not allowed under FIFRA.

History: Add. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8307e Registration for special local needs.

Sec. 8307e. To register a pesticide for special local needs pursuant to section 24(c) of FIFRA, 7 U.S.C. 136v, or the regulations promulgated under that section, the director shall require the information required under section 8307a(5). A pesticide may be registered for special local needs if the director determines that all of the following conditions are met:

(a) A special local need exists.

(b) The pesticide's composition warrants the proposed claims for it.

(c) The pesticide's labeling and other submitted material comply with the labeling requirements of FIFRA or regulations promulgated under that act.

(d) It does not cause unreasonable adverse effects on the environment.

(e) The classification for general or restricted use conforms with section 3(d) of FIFRA, 7 U.S.C. 136a.

History: Add. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8307f Information requirements.

Sec. 8307f. (1) Upon the director's request, a person who has registered a pesticide shall provide the information necessary to determine its mobility in the environment and its potential to contaminate groundwater. This information may include any of the following:

(a) Water solubility.

(b) Vapor pressure.

(c) Octanol-water partition coefficient.

(d) Soil absorption coefficient.

(e) Henry's law constant.

(f) Dissipation studies including the rate of hydrolysis, photolysis, or aerobic or anaerobic soil metabolism.

(g) Product formulation.

(h) Other information considered necessary by the director.

(2) Information requested under subsection (1) shall be consistent with product registration information required under FIFRA.

(3) As used in this section:

(a) “Aerobic soil metabolism” means chemical degradation in soil in the presence of oxygen.

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(b) “Anaerobic soil metabolism” means chemical degradation in soil in the absence of oxygen.

(c) “Henry's law constant” means the ratio of the partial pressure of a compound in air to the concentration of the compound in water at a given temperature.

(d) “Hydrolysis” means a chemical reaction in which water combines with and splits the original chemical creating degradation products.

(e) “Octanol-water partition coefficient” means the ratio of a chemical's concentration in the water-saturated octanol phase to the chemical's concentration in the octanol-saturated water phase.

(f) “Photolysis” means a chemical reaction in which light or radiant energy serves to split the original compound creating degradation products.

(g) “Soil absorption coefficient” means the ratio of absorbed chemical per unit weight of soil or organic carbon to the aqueous solute concentration.

(h) “Vapor pressure” means the pressure exerted by the vapor of a substance when it is under equilibrium conditions.

(i) “Water solubility” means the maximum amount of a material that can be dissolved in water to give a stable solution.

History: Add. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8308 Powers of director; audits.

Sec. 8308. (1) The director may do all of the following:

(a) Issue an experimental permit to a person applying for that permit if the director determines that the permit is necessary for the applicant to accumulate information necessary to register a pesticide.

(b) Prescribe terms, conditions, and the period of time the pesticide may be used under the experimental permit, which shall be under the supervision of the director.

(c) Revoke an experimental permit when its terms or conditions are violated or its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.

(2) The director may conduct audits to determine compliance with this part. In conducting audits under this part, the director may contract for the performance of the audit.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8309 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

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use and sale of restricted use pesticides.

(3) A person licensed under subsection (1) that operates from a business location outside this state shall do either of the following:

(a) Continuously maintain in this state a registered office and a resident agent, which agent may be an individual resident in this state whose business office or residence is identical with the registered office, a domestic corporation or limited liability company, or a foreign corporation or limited liability company authorized to transact business in this state and having a business office identical with the registered office. The person licensed under subsection (1) shall file with the department the name, address, and telephone number of the resident agent and shall maintain and make available records required by this part and part 87.

(b) Maintain and make available to the department records required by this part and part 87 and pay all costs incurred by the department in auditing the records if they are held at an out-of-state location.

(4) A restricted use pesticide dealer shall forward to the director a record of all sales of restricted use pesticides on forms provided by the director as required by rule. A restricted use pesticide dealer shall keep copies of the records on file for 2 years. These records are subject to inspection by an authorized agent of the director. The records shall, upon request, be supplied in summary form to other state agencies. The summary shall include the name and address of the restricted use pesticide dealer, the name and address of the purchaser, the name of the pesticide sold, and, in an emergency, the quantity sold. Information may not be made available to the public if, in the discretion of the director, release of that information could have a significant adverse effect on the competitive position of the dealer, distributor, or manufacturer.

(5) A restricted use pesticide dealer shall sell or distribute restricted use pesticides for use only by applicators certified under this part.

(6) The director may deny, suspend, or revoke a restricted use pesticide dealer's license for any violation of this part or an order issued under this part, or upon conviction under this part, FIFRA, or a state pesticide law of a reciprocating state committed by the dealer or the dealer's officer, agent, or employee. The director shall inform an applicant who is denied a restricted use pesticide dealer's license of the reasons why the license was denied.

(7) A restricted use pesticide dealer shall maintain and submit to the department records of all restricted use pesticide sales to private applicators and the intended county of application for those pesticides.

(8) Information collected in subsection (7) is confidential business information and is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(9) A restricted use pesticide dealer that distributes an agricultural pesticide into this state shall report to the agricultural pesticide registrant all of the following information concerning that distribution:

(a) The product name.

(b) The EPA registration number.

(c) The amount of pesticide sold or distributed.

(d) The wholesale value of pesticide sold or distributed.

(e) The date of sale or distribution.

(f) The sales or distribution invoice number.

(g) The name and address of the consignee.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2008, Act 18, Imd. Eff. Feb. 29, 2008;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8310a Agricultural pesticide dealer's license; distribution, sale, or offer for sale; applicant as person in charge; form; information to be provided; out-of-state business location; report; denial, suspension, or revocation of license; exemption from requirements of subsection (1).

Sec. 8310a. (1) A person that is not licensed under section 8310 shall not engage in distributing, selling, or offering for sale agricultural pesticides except as authorized under an annual license for each place of business issued by the department pursuant to part 13.

(2) The applicant for a license under subsection (1) shall be the individual in charge of each business location.

(3) The application for a license under subsection (1) shall be on a form provided by the director and shall contain information regarding the applicant's proposed operations and other information considered pertinent by the director.

(4) A person licensed under subsection (1) who operates from a business location outside this state shall do

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either of the following:

(a) Continuously maintain in this state a registered office and a resident agent, which agent may be an individual resident in this state whose business office or residence is identical with the registered office, a domestic corporation or limited liability company, or a foreign corporation or limited liability company authorized to transact business in this state and having a business office identical with the registered office. The person licensed under subsection (1) shall file with the department the name, address, and telephone number of the resident agent and shall maintain and make available records required by this part and part 87.

(b) Maintain and make available to the department records required by this part and part 87 and pay all costs incurred by the department in auditing the records if they are held at an out-of-state location.

(5) An agricultural pesticide dealer who distributes an agricultural pesticide into this state shall report to the agricultural pesticide registrant all of the following information concerning that distribution:

(a) The product name.

(b) The EPA registration number.

(c) The amount of pesticide sold or distributed.

(d) The wholesale value of pesticide sold or distributed.

(e) The date of sale or distribution.

(f) The sales or distribution invoice number.

(g) The name and address of the consignee.

(6) The director may deny, suspend, or revoke an agricultural pesticide dealer's license for any violation of this part or an order issued under this part, or upon conviction under this part, FIFRA, or a state pesticide law of a reciprocating state committed by the dealer or the dealer's officer, agent, or employee. The director shall inform an applicant who is denied an agricultural pesticide dealer's license of the reasons why the license was denied.

(7) A pesticide registrant who distributes agricultural pesticides into this state is exempt from subsection (1).

History: Add. 2008, Act 18, Imd. Eff. Feb. 29, 2008;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8311 Certification and other requirements; identification; records of certified commercial applicator; submission of summary to director; supervision; following recommended and accepted good practices; governmental agencies subject to part and rules.

Sec. 8311. (1) A person shall not use a restricted use pesticide without first complying with the certification requirements of this part.

(2) A person is not required to be a certified applicator to apply a restricted use pesticide for a private agricultural purpose if the person is under the direct supervision of a certified applicator, unless prohibited by the pesticide label.

(3) Certification requirements for commercial applicators shall include completion of written examinations prescribed by the director. Certification requirements for private agricultural applicators shall provide optional methods of certification to include 1 of the following:

(a) Self-study and examination.

(b) Classroom training and examination.

(c) An oral fact-finding interview administered by an authorized representative of the director when a person is unable to demonstrate competence by examination or classroom training.

(4) At the time of sale, private applicators shall identify the intended county of application of a restricted use pesticide.

(5) A certified commercial applicator shall maintain records of restricted use pesticide applications for 3 years from the date of application and make those records available upon request to an authorized representative of the director during normal business hours.

(6) A commercial applicator shall keep for 3 years from the date of application a record of the pesticide registration number, product name, the formulated amount applied, and application location for all restricted use pesticides used by the commercial applicator. A summary of this information indicating the pesticide registration number, product name, and total formulated amount of pesticide applied to each county during the previous calendar year shall be transmitted to the director before March 1. This summary shall be submitted on forms provided by or approved by the director. Information collected under this subsection is confidential business information and is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

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(7) A certified applicator shall directly supervise the application of a restricted use pesticide if prescribed by the label, this part, or rules promulgated under this part.

(8) A commercial applicator is responsible for pesticide applications made by persons under his or her supervision.

(9) Each person shall follow recommended and accepted good practices in the use of pesticides, including, but not limited to, use of a pesticide in a manner consistent with its labeling.

(10) A federal agency, state agency, municipality, county road commission, or any other governmental agency that uses a pesticide classified for restricted use is subject to this part and the rules promulgated under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8312 Certified applicator; completion of certification requirements; application for certified applicator certificate; fee; issuance of certificate; restrictions; grounds for refusal to issue or renew certificate; denying, revoking, or suspending certificate; reasons for denial; display of certificate.

Sec. 8312. (1) To become a certified applicator, an applicant must satisfactorily complete the certification requirements prescribed by the director and categorized according to the various types of pesticide applications prescribed by rule and consistent with the regulations of the EPA.

(2) The application for a certified applicator certificate shall contain information considered to be pertinent by the director.

(3) A certified applicator applicant shall pay the appropriate fee as provided in section 8317.

(4) The director shall issue a certificate to applicants that successfully comply with all certification requirements under this part.

(5) The director may restrict an applicant to use only a certain type of equipment or pesticide upon finding that the applicant is only qualified to use that type of equipment or pesticide.

(6) The director may refuse to issue or renew a certificate if an applicant demonstrates an insufficient knowledge of any item called for in the application or has unsatisfied judgments under this part or rules promulgated under this part against him or her or if the equipment to be used by the applicant is unsafe or inadequate to properly apply pesticides.

(7) The director may at any time deny, revoke, or suspend a private agricultural applicator certificate or a commercial applicator certificate for a violation of this part or upon conviction under section 14 of FIFRA, 7 USC 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

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be used by the applicant, and other information considered pertinent by the director.

(4) An application for a commercial applicator license shall be accompanied by the appropriate fee as provided in section 8317.

(5) An application for a commercial applicator license shall be accompanied by proof of sufficient financial responsibility as prescribed by rule.

(6) The director may restrict an applicant to use only a certain type of equipment or pesticide upon finding that the applicant is qualified to use only that type.

(7) The director may refuse to issue or renew a commercial applicator license if the applicant demonstrates insufficient knowledge of an item in the application, or has unsatisfied judgments under this part or a rule promulgated under this part against him or her, or if the equipment used by the applicant is unsafe or inadequate for pesticide applications.

(8) The director may at any time deny, revoke, or suspend a commercial applicator license for a violation of this part or a violation of an order issued under this part, or upon conviction under this part, FIFRA, or a state pesticide law of a reciprocating state in accordance with section 8320.

(9) The director shall inform an applicant that is denied a commercial applicator license of the reasons why the license was denied.

(10) A person subject to the licensing requirements in this section shall only apply pesticides that are registered with the United States EPA, or subject to either the United States EPA's or this state's laws and rules.

(11) A person subject to the licensing requirements in this section shall not represent that a pesticide application has characteristics, ingredients, uses, benefits, or qualities that it does not have.

(12) A person subject to the licensing requirements in this section shall not represent that a pesticide application is necessary to control a pest if the pest is not present or likely to occur.

(13) A commercial applicator that operates from a business location outside this state shall do either of the following:

(a) Continuously maintain in this state a registered office and a resident agent, which agent may be an individual resident in this state whose business office or residence is identical with the registered office, a domestic corporation or limited liability company, or a foreign corporation or limited liability company authorized to transact business in this state and having a business office identical with the registered office. The commercial applicator shall file with the department the name, address, and telephone number of the resident agent and shall maintain and make available records required by this part and part 87.

(b) Maintain and make available to the department records required by this part and part 87 and pay all costs incurred by the department in auditing the records if they are held at an out-of-state location.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418,Imd. Eff. June 5, 2002;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8314 Commercial application of pesticide; certified or registered applicator; qualifications; temporary registration; fee; program completion form; authorized applications; exemption; displaying registration certificate; training program; denial, revocation, or suspension of certification or registration; documents and forms.

Sec. 8314. (1) A person shall not apply a pesticide for a commercial purpose or in the course of his or her employment unless that person is either a certified applicator or a registered applicator. A person may apply a general use pesticide for a private agricultural purpose without being a certified applicator or registered applicator.

(2) A person who is not subject to the licensing requirement in section 8313 may apply a general use ready-to-use pesticide without being a certified applicator or a registered applicator.

(3) A commercial certified or registered applicator must be at least 18 years of age.

(4) A person who is not subject to the licensing requirements in section 8313 may apply a general use antimicrobial pesticide without being a certified or registered applicator if there is no potential for movement of an antimicrobial pesticide to affect surface water or groundwater.

(5) A commercial applicator shall only make pesticide applications in the category for which he or she is certified or registered.

(6) A registered applicator shall do all of the following:

(a) Complete a training program that is approved by the director and conducted by a trainer who has the minimum qualifications established by rule. The training program for applicators who apply pesticides for private agricultural purposes may utilize other methods of training and testing as provided in section 8311(1).

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(b) Pass a test that is approved by the director.

(c) Possess a valid registration certificate issued by the director.

(7) A trainer shall issue a temporary registration to an applicant who completes an approved training program and passes a test administered by the director. A temporary registration is valid from the time it is issued until the applicant receives a registration certificate from the director. The department shall provide the applicant with the registration certificate upon payment of the fee provided for in section 8317 and when the approved trainer completes and submits a program completion form.

(8) A registered applicator who applies general use pesticides and is not subject to commercial pesticide applicator licensing requirements is exempt from the provisions requiring supervision by a certified applicator.

(9) A person shall display his or her registration certificate upon the request of the director.

(10) A registered applicator shall complete a training program every 3 years to be eligible to renew his or her registration.

(11) The director may at any time deny, revoke, or suspend a certification or registration for a violation of this part or upon conviction under this part, FIFRA, or a state pesticide law of a reciprocating state in accordance with section 8320.

(12) The director shall develop and provide the documents and forms necessary to implement this section.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8315 Aerial application of pesticides; requirements.

Sec. 8315. (1) A private agricultural applicator or a commercial applicator, in addition to complying with the other requirements of this part, shall meet 1 or more of the following requirements before engaging in the aerial application of pesticides:

(a) Attainment of at least 3 years of experience with not fewer than 200 hours of agricultural aerial application under the supervision of a commercial aerial applicator.

(b) Be licensed as a commercial aerial applicator before December 27, 1988.

(c) Successfully complete an aerial applicator training program recognized by the director as sufficient to assure the protection of the public health, safety, and welfare and the environment.

(2) A private agricultural applicator or a commercial applicator authorized under this part to make aerial application of pesticides shall do either of the following once every 3 years:

(a) Demonstrate to the director the applicator's personal participation in a self-regulating application flight efficiency clinic sponsored or recognized by the Michigan cooperative extension service and approved by the department with an aircraft that the applicant operates.

(b) Retake the certification examinations and submit to an inspection of the applicator's aircraft, equipment, and spray operations by an authorized representative of the director.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8316 Notice of pesticide application at school or day care center.

Sec. 8316. (1) Beginning 1 year after the effective date of the amendatory act that added this subsection, a person shall not apply a pesticide in a school or day care center unless the school or day care center has an integrated pest management program in place for the building.

(2) The primary administrator of a school or day care center or his or her designee shall annually notify the parents or guardians of children attending that school or cared for at that day care center that the parents or guardians will receive advance notice of the application of a pesticide, other than a bait or gel formulation, at the school or day care center. The primary administrator of a school or his or her designee shall give the annual notification not more than 30 days after the beginning of the school year, and the primary administrator of a day care center or his or her designee shall give the annual notification in September.

(3) An annual notification under subsection (2) shall satisfy all of the following requirements:

(a) Be in writing.

(b) Specify 2 methods by which advance notice of the application of a pesticide will be given at least 48 hours before the application. The first method shall be by posting at the entrances to the school or day care center. Subject to subdivision (c), the second method shall be 1 of the following:

(*i*) Posting in a public, common area of the school or day care center, other than an entrance.

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(*ii*) E-mail.

(*iii*) A telephone call by which direct contact is made with a parent or guardian of a student of the school or a child under the care of the day care center or a message is recorded on an answering machine.

(*iv*) Providing students of the school or children under the care of the day care center with a written notice to be delivered to their parents or guardians.

(*v*) Posting on the school's or day care center's website.

(c) State that, in addition to notice under subdivision (b), parents or guardians are entitled to receive the notice by first-class United States mail postmarked at least 3 days before the application, if they so request, and the manner in which such a request shall be made.

(d) For a school, inform parents and guardians that they may review the school's integrated pest management program, if any, and records on any pesticide applications.

(e) For a school, provide the name, telephone number, and, if applicable, e-mail address of the person at the school building responsible for pesticide application procedures.

(4) An advance notice of application of a pesticide, other than a bait or gel formulation, shall contain all of the following information:

(a) A statement that a pesticide is expected to be applied.

(b) The target pest or pests.

(c) The approximate location of the application.

(d) The date of the application.

(e) The name, telephone number, and, if available, e-mail address of a contact person at the school or day care center responsible for maintaining records with specific information on pest infestation and actual pesticide application as required by rules.

(f) A toll-free telephone number for a national pesticide information center recognized by the department and a telephone number for pesticide information from the department.

(5) Before applying a pesticide, other than a bait or gel formulation, a school or day care center shall provide advance notice to parents and guardians consistent with subsections (3)(b) to (e) and (4). However, in an emergency, a school or day care center may apply a pesticide without providing advance notice to parents or guardians. Promptly after the emergency pesticide application, the school or day care center shall give parents or guardians notice of the emergency pesticide application that otherwise meets the requirements of subsection (3)(b) and (c). The notice shall contain a statement that a pesticide was applied and shall meet the requirements of subsection (4)(b) to (f).

(6) Liquid spray or aerosol insecticide applications shall not be made in a room of a school building or day care center building unless the room will be unoccupied by students or children for not less than 4 hours after the application or unless the product label requires a longer reentry period. The building manager shall be notified of the reentry restrictions by the applicator.

(7) The department shall do both of the following:

(a) Within 1 year after the effective date of the amendatory act that added this subsection, develop a model integrated pest management policy for schools, in consultation with the department of education and the pesticide advisory committee created in section 8326, and make the policy available to all school districts, intermediate school districts, public school academies, and private schools.

(b) Encourage local and intermediate school boards and boards of directors of public school academies to do both of the following:

(*i*) Adopt and follow the model integrated pest management policy developed under subdivision (a).

(*ii*) Require appropriate staff to obtain periodic updates and training on integrated pest management from experts on the subject.

(8) Subsections (1) to (7) do not apply to sanitizers, germicides, disinfectants, or antimicrobial agents.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 24, Imd. Eff. Mar. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.8317 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.

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(d) For a private registered applicator, $50.00.

(2) Certificates for commercial applicators, private agricultural applicators, and registered applicators are valid for a period of not less than 3 years to be established by rule by the director.

(3) The license application fee for a commercial applicator license is $100.00. The license expires annually on December 31.

(4) The registration application fee for the registration of pesticides sold, offered for sale, exposed for sale, or distributed is $100.00 per product. However, if the pesticide registration fee is received by the department after June 30, the registrant shall pay an additional late fee of $100.00 for each pesticide.

(5) The license application fee for a restricted use pesticide dealer's license is $100.00. The license expires annually on December 31.

(6) The license application fee for an agricultural pesticide dealer's license is $100.00. The license expires annually on December 31.

(7) Application fees submitted under this section are not refundable.

(8) Notwithstanding any other provision of subsection (1)(b) and (d), the department shall waive any fee otherwise required under subsection (1)(b) and (d) if the individual responsible for paying the fee is, and provides proof satisfactory to the department that he or she is, an honorably discharged veteran of the armed forces of the United States.

(9) The department shall deposit application, license, registration, and administrative fees and administrative, civil, and noncriminal fines received, as well as any payment for costs or reimbursement to the department for investigation, under this part in the agriculture licensing and inspection fees fund created in section 9 of the insect pest and plant disease act, 1931 PA 189, MCL 286.209, to be used, pursuant to appropriation, by the director in administering and carrying out those duties required by law under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002;—Am. 2003, Act 82, Imd. Eff. July 23, 2003;—Am. 2007, Act 78, Imd. Eff. Sept. 30, 2007;—Am. 2008, Act 18, Imd. Eff. Feb. 29, 2008;—Am. 2012, Act 316, Imd. Eff. Oct. 1, 2012;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8318 Repealed. 2007, Act 78, Imd. Eff. Sept. 30, 2007.

Compiler's note: The repealed section pertained to establishment of pesticide control fund.

324.8319 Exemptions; supervision by allopathic or osteopathic physician or doctor of veterinary medicine.

Sec. 8319. (1) The certification and registration of applicators and licensing requirements do not apply to any of the following:

(a) Employees of a certified private agricultural applicator while acting under the level of supervision required in this part.

(b) Persons applying general use pesticides for a private agricultural purpose.

(c) Commercial applicators applying general use microbiocides indoors where there is no potential for movement of an antimicrobial pesticide to affect surface water or groundwater. However, this subdivision does not exempt from these requirements the application of antimicrobial pesticides by commercial applicators to plants or planting medium indoors.

(d) Persons not subject to licensing requirements in section 8313 that apply general use pesticides to swimming pools.

(e) Indoor applications of general use antimicrobial pesticides by persons on their own premises or employees of those persons when making applications on those premises as a scheduled and required work assignment in the course of their employment, where there is no potential for movement of an antimicrobial pesticide to affect surface water or groundwater.

(f) Allopathic or osteopathic physicians and doctors of veterinary medicine applying pesticides during the course of their normal practice and their employees and people working under their control while acting under the level of supervision required in subsections (2) and (3).

(g) Persons conducting laboratory type research involving restricted use pesticides.

(2) An allopathic or osteopathic physician or a doctor of veterinary medicine shall supervise the application of a general use pesticide by a competent employee under his or her instruction and control during the course of the normal practice of the allopathic or osteopathic physician or the doctor of veterinary medicine even if the allopathic or osteopathic physician or the doctor of veterinary medicine is not physically present. An allopathic or osteopathic physician or a doctor of veterinary medicine shall directly supervise the application of a restricted use pesticide by an employee under his or her instruction or control during the

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course of the normal practice of the allopathic or osteopathic physician or doctor of veterinary medicine by being physically present at the time and place the restricted use pesticide is being applied.

(3) An allopathic or osteopathic physician or doctor of veterinary medicine is subject to the requirements, prohibitions, and penalties of this part and rules promulgated under this part for an application of pesticides by the allopathic or osteopathic physician or the doctor of veterinary medicine and for an application of pesticides by an employee directly or indirectly supervised by the allopathic or osteopathic physician or the doctor of veterinary medicine during the course of the normal practice of the allopathic or osteopathic physician or the doctor of veterinary medicine.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 312, Imd. Eff. June 24, 1996;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8320 Reciprocal agreements.

Sec. 8320. The director may enter into reciprocal agreements with other states or federal agencies for the purpose of accepting certification or registration required for pesticide applicators, if those states or federal agencies have an approved program to certify or register applicators, and if the requirements for certification or registration by those states or federal agencies equal or exceed the certification or registration requirements of this state.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8321 Responsibility for damage resulting from misuse of pesticides; filing claim for damages; inspection of damages; collection of samples; effect of failure to file report.

Sec. 8321. (1) A certificate or license issued by the director does not exonerate the holder from responsibility for damage resulting from misuse of pesticides, such as, but not limited to, overdosing, drifting, or misapplication.

(2) A person claiming damages from a pesticide application shall file a claim to, and on a reporting form provided by, the director. This report shall be filed within 60 days after the date of the alleged damaging application or first observation of damage by the claimant. If a growing crop is alleged to have been damaged, the report shall be filed before 25% of the crop is harvested. The director shall, within 7 days after receipt of the report, notify the applicator and the owner or lessee of the property or other persons who may be charged with the responsibility of the damages claimed, and furnish them copies of any statements that are requested. The director or his or her representative will inspect damages if the director determines that the complaint has sufficient merit. The director shall make all information pertaining to the complaint available to the person claiming damage and to the person who is alleged to have caused the damage.

(3) The claimant shall permit the director, the applicator, and their representatives, such as a bondsman or insurer, to observe within reasonable hours the property or nontarget organism alleged to have been damaged and to collect samples for further examination in order that damage may be determined.

(4) The filing of a report or the failure to file a report is not required to be alleged in any petition filed in a court of law, and the failure to file the report is not a bar to the maintenance of a criminal or civil action.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8322 Additional powers of director; preliminary order; program on pesticide container recycling and disposal.

Sec. 8322. (1) The director may do all of the following:

(a) Declare as a pest any form of plant or animal life, except viruses, nematodes, bacteria, or other microorganisms on or in living human beings or other animals, that is injurious to health or the environment.

(b) Determine the toxicity of pesticides to human beings. The director shall use the data in support of registration and classification as a guide in this determination.

(c) Determine pesticides, and quantities of substances contained in pesticides, that are injurious to the environment. The director shall use the EPA regulations as a guide in this determination.

(d) Enter into cooperative agreements with agencies of the federal government or any other agency of this state, or an agency of another state, for the purpose of implementing this part and securing uniformity of rules.

(e) Enter and conduct inspections upon any public or private premises or other place, including vehicles of

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transport, where pesticides or devices are being used or held for distribution or sale, for the purposes of inspecting records, inspecting and obtaining samples of pesticides or devices, and to inspect equipment or methods of application, to assure compliance with this part and the rules promulgated under this part.

(f) Allow only certified applicators to apply a pesticide that is classified as a restricted use pesticide pursuant to subsection (2).

(g) Conduct investigations when there is reasonable cause to believe that a pesticide has been used in violation of this part or the rules promulgated under this part.

(2) In addition to any other authority provided by this part, the director, by administrative order, may:

(a) Classify a pesticide as a restricted use pesticide in accordance with any 1 of the restrictive criteria in 40 C.F.R. 152.170.

(b) Create certification categories in addition to those promulgated by rule.

(3) Prior to classifying a pesticide as a restricted use pesticide under subsection (2), the director shall issue a preliminary administrative order and provide for a 30-day period for public comment and review pertaining to the preliminary order. Prior to issuing the final administrative order, the director shall review and consider any public comments received during the 30-day period. An administrative order classifying a pesticide as a restricted use pesticide shall cite each of the provisions of subsection (2) that justify that classification.

(4) The department shall develop a program on pesticide container recycling and disposal to be approved by the commission of agriculture. The program shall be limited to licensed pesticide dealers and other persons seeking approval from the department for participation in the program.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8323 Confirmation of groundwater contamination; duties of director; development of activity plan by person responsible for contamination; approval or rejection by director; continuation of certain activities; order to cease or modify activities; hearing.

Sec. 8323. (1) Upon confirming contamination of groundwater by a pesticide pursuant to part 87 at a single location, the director shall do all of the following:

(a) Assist in the coordination of local activities designed to prevent further contamination of groundwater.

(b) Conduct envelope monitoring.

(c) Perform an evaluation of activities that may have contributed to the contamination.

(d) Make a determination as to the degree to which groundwater stewardship practices were being utilized.

(e) Make a determination as to the potential source or sources of the contamination.

(2) If confirmed concentrations of pesticides exceed the groundwater resource response level or a confirmed contaminant has migrated into groundwater off of the property, the director shall require a person whose action or negligence was potentially responsible for the contamination to develop an activity plan. A person required to develop an activity plan shall develop and submit the activity plan to the director within 90 days after receiving notice from the director. Upon receipt of an activity plan, the director shall approve or reject the plan within 90 days. If rejected, the director shall provide a description of reasons for rejection. Upon receipt of a rejection, the person shall within 90 days develop an acceptable activity plan.

(3) If the activities on a contamination site are determined by the director to be in accordance with all applicable components of the groundwater stewardship practices and groundwater protection rules, activities that are not responsible for or potentially responsible for the contamination incident may continue.

(4) If activities on a contamination site are determined by the director not to be in accordance with this part, the director may issue an order to cease or modify activities on the site involving pesticide use. A person aggrieved by an order issued under this section may request a hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8324 Groundwater protection rules.

Sec. 8324. (1) The director shall promulgate a groundwater protection rule that defines the scope and region of implementation of the rule if any of the following occur:

(a) A pesticide has been confirmed in groundwater at levels exceeding its groundwater resource response level in at least 3 distinct locations as a result of similar activities as determined under section 8323(1) and the

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director determines that voluntary adoption of the groundwater stewardship practices pursuant to part 87 has not been effective in preventing groundwater contaminant concentrations from exceeding the groundwater resource response level.

(b) The EPA proposes to suspend or cancel registration of the pesticide, prohibits or limits the pesticide's sale or use in the state, or otherwise initiates action against the pesticide because of groundwater concerns.

(2) The director may promulgate a groundwater protection rule for a specific pesticide if the pesticide contains an active ingredient with a method detection limit greater than its groundwater resource response level.

(3) In determining the need for and scope of a groundwater protection rule, the director shall consider the type of contaminant or contaminants and the extent to which any of the following apply:

(a) The source or sources of the contaminant or contaminants can be identified.

(b) An identified source or sources are associated with a specific activity or activities.

(c) Local response to the contamination is adequate to protect groundwater.

(d) There are state label restrictions as allowed under sections 18 and 24 of FIFRA, chapter 125, 86 Stat. 995 and 997, 7 U.S.C. 136p and 136v, that could adequately address the problem.

(e) Restricted use classification could adequately address the problem.

(f) The use, value, and vulnerability of the resource and whether the groundwater is a currently or reasonably expected source of drinking water.

(g) The technical and economic feasibility of any mandated practices on persons in the region.

(h) The overall productivity and economic viability of the state's agriculture.

(4) In determining the region of implementation for a groundwater protection rule, the director shall consider both of the following:

(a) The reliability and geographical distribution of groundwater sample test data.

(b) The extent to which local aquifer sensitivity conditions can be considered characteristics of a larger region.

(5) The director may approve alternative operations to those defined in a groundwater protection rule if they can be shown to provide the equivalent level of groundwater protection.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8325 Rules.

Sec. 8325. (1) The director shall promulgate rules for implementing this part, including, but not limited to, rules providing for the following:

(a) The collection, examination, and reporting the results of examination of samples of pesticides or devices.

(b) The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers.

(c) The designation of restricted use pesticides and agricultural pesticides for the state or for specified areas within the state. The director may include in the rule the time and conditions of sale, distribution, and use of restricted use pesticides and agricultural pesticides.

(d) The certification and licensing of applicators and the licensing of restricted use pesticide dealers and agricultural pesticide dealers.

(e) The maintenance of records by certified commercial applicators with respect to applications of restricted use pesticides.

(f) Good practice in the use of pesticides.

(g) Notification or posting, or both, designed to inform persons entering certain public or private buildings or other areas where the application of a pesticide, other than a general use ready-to-use pesticide, has occurred.

(h) Use of a pesticide in a manner consistent with its labeling including adequate supervision of noncertified applicators if appropriate.

(i) Prenotification by the building manager upon request for affected persons regarding the application of a pesticide at daycare centers and schools.

(j) Responsibility of a building manager to post signs provided to him or her by a commercial applicator.

(k) Designation of posted school bus stops as sensitive areas.

(*l*) The establishing of a schedule of civil fines for violation of local ordinances as described in section 8328(3).

(2) By December 27, 1989, the director shall submit rules to the joint committee on administrative rules

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pertaining to all of the following:

(a) The development of a training program for applicators who apply pesticides for private agricultural purposes on the use of appropriate procedures for the application of pesticides; safety procedures for pesticide application; clothing and protective equipment for pesticide application; the detection of common symptoms of pesticide poisoning; the means of obtaining emergency medical treatment; hazards posed by pesticides to workers, the public health, and the environment; specific categories of pesticides; and the requirements of applicable laws, rules, and labeling.

(b) The development of training programs for integrated pest management systems in schools, public buildings, and health care facilities.

(c) The duty of commercial applicators to inform customers of potential risks and benefits associated with the application of pesticides.

(3) By June 27, 1990, the director shall submit rules to the joint committee on administrative rules pertaining to the protection of agriculture employees who hand harvest agricultural commodities regarding all of the following:

(a) The establishment of field reentry periods after the application of agricultural pesticides.

(b) The posting and notification of areas where pesticides have been applied.

(c) The use of protective clothing, safety devices, hand washing, or other methods of protection from pesticide exposure.

(d) Notification of agricultural workers of poison treatment facilities.

(4) If the EPA at any time adopts and publishes agricultural worker protection standards, the federal standards shall supersede rules promulgated under subsection (3).

(5) By December 27, 1989, the director shall submit rules to the joint committee on administrative rules. These rules shall include all of the following:

(a) Minimum standards of competency and experience or expertise for trainers of certified and registered applicators.

(b) The development of a training program for applicators on the use of appropriate procedures for the application of pesticides; safety procedures for pesticide application; clothing and protective equipment for pesticide application; the detection of common symptoms of pesticide poisoning; the means of obtaining emergency medical treatment; hazards posed by pesticides to workers, the public health, and the environment; specific categories of pesticides; and the requirements of applicable laws, rules, and labeling.

(c) The number of directly supervised application hours required before a registered applicator may apply each category of restricted use pesticide without direct supervision.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2008, Act 18, Imd. Eff. Feb. 29, 2008.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 285.636.1 et seq. of the Michigan Administrative Code.

324.8326 Pesticide advisory committee; creation; appointment, qualifications, and terms of members; vacancies; meetings; quorum; duties and responsibilities; meetings open to the public.

Sec. 8326. (1) A pesticide advisory committee is created within the department. The committee shall be composed of the following members:

(a) The director.

(b) The director of the department of natural resources.

(c) A representative of the department of natural resources selected by the director of the department of natural resources who has expertise regarding water quality programs.

(d) The director of public health.

(e) The director of the Michigan cooperative extension service.

(2) The director shall appoint additional members to the committee, 1 each representing the following:

(a) The Michigan pest control association.

(b) Licensed outdoor commercial applicators.

(c) Producers of agricultural commodities.

(d) Licensed aerial applicators.

(e) Nongovernmental organizations for environmental preservation.

(f) Farm employees.

(g) Those in the medical or health science profession experienced in the toxicology of pesticides.

(h) Agricultural chemical industry.

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(i) Nongovernmental organizations representing human health interests.

(3) The members of the committee may designate an authorized representative or substitute to represent them on the committee. Of the members first appointed by the director, 3 shall serve for 1 year, 3 for 2 years, and 2 for 3 years. Thereafter, an appointment shall be for 3 years. The director shall remove any member who is absent, either personally or through a designated representative or substitute, for 4 or more consecutive meetings. Vacancies shall be filled for the balance of an unexpired term. The committee shall meet on the call of the director, who shall serve as chairperson. The director shall call a meeting of the committee upon request of 2 or more members. A majority of the members of the committee constitutes a quorum.

(4) The pesticide advisory committee shall consult with and advise the director in the administration of this part and shall have the following responsibilities:

(a) To analyze and summarize information pertaining to pesticide use, including, but not limited to, the number and types of pesticide use violations and the underlying causes and circumstances involving pesticide misuse, and to develop a profile of violators of this part.

(b) To evaluate potential contamination related to the size and disposal of pesticide containers for home, agricultural, industrial, and commercial use and make recommendations to the legislature.

(c) To utilize available information pertaining to the misuse of pesticides to determine whether the training programs offered by the director are effective in curtailing misuses.

(d) To review all training requirements for applicators and persons licensed under this part, including the specific review of the components of each area tested under this part, and to make recommendations to the director regarding training and testing. Notwithstanding the responsibilities of the committee under this subdivision, the specific test questions prepared to implement the requirements of this part shall remain confidential.

(e) To annually publish a report to be submitted to the governor, the legislature, and the director. The report shall include all of the following:

(*i*) A review of the recommendations of the committee.

(*ii*) Recommendations regarding amendatory language for this part.

(*iii*) Recommendations regarding resources necessary to adequately implement this part.

(*iv*) A summary of the annual enforcement actions taken under this part.

(5) All meetings of the committee shall be conducted pursuant to the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8327 Order to cease use of, or to refrain from intended use of, pesticide; effect of noncompliance; inspection; rescission of order.

Sec. 8327. (1) When the director has probable cause to believe that an applicator is using or intending to use a pesticide in an unsafe or inadequate manner or in a manner inconsistent with its labeling, the director shall order the applicator to cease the use of or refrain from the intended use of the pesticide. The order may be either oral or written and shall inform the applicator of the reason for the order.

(2) Upon receipt of the order, the applicator shall immediately comply with the director's order. Failure to comply constitutes cause for revocation of the applicator's license or certification or registration and subjects the applicator to the penalty imposed under section 8333.

(3) The director shall rescind the order upon being satisfied that the applicator has complied with the order.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8328 Local governments; powers.

Sec. 8328. (1) Except as otherwise provided in this section, it is the express legislative intent that this part preempt any local ordinance, regulation, or resolution that purports to duplicate, extend, or revise in any manner the provisions of this part. Except as otherwise provided for in this section, a local unit of government shall not enact, maintain, or enforce an ordinance, regulation, or resolution that contradicts or conflicts in any manner with this part.

(2) If a local unit of government is under contract with the department to act as its agent or the local unit of government has received prior written authorization from the department, then that local unit of government may pass an ordinance that is identical to this part and rules promulgated under this part, except as prohibited

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in subsection (7). The local unit of government's enforcement response for a violation of the ordinance that involves the use of a pesticide is limited to issuing a cease and desist order as prescribed in section 8327.

(3) A local unit of government may enact an ordinance identical to this part and rules promulgated under this part regarding the posting and notification of the application of a pesticide. Subject to subsection (8), enforcement of such an ordinance may occur without prior authorization from the department and without a contract with the department for the enforcement of this part and rules promulgated under this part. The local unit of government shall immediately notify the department upon enactment of such an ordinance and shall immediately notify the department of any citations for a violation of that ordinance. A person who violates an ordinance enacted under this subsection is responsible for a municipal civil infraction and may be ordered to pay a civil fine of not more than $500.00.

(4) A local unit of government may enact an ordinance prescribing standards different from those contained in this part and rules promulgated under this part and which regulates the distribution, sale, storage, handling, use, application, transportation, or disposal of pesticides under either or both of the following circumstances:

(a) Unreasonable adverse effects on the environment or public health will exist within the local unit of government. The determination that unreasonable adverse effects on the environment or public health will exist shall take into consideration specific populations whose health may be adversely affected within that local unit of government.

(b) The local unit of government has determined that the use of a pesticide within that unit of government has resulted or will result in the violation of other existing state laws or federal laws.

(5) An ordinance enacted pursuant to subsections (2), (3), and (4) shall not conflict with existing state laws or federal laws. An ordinance enacted pursuant to subsection (4) shall not be enforced by a local unit of government until approved by the commission of agriculture. If the commission of agriculture denies an ordinance enacted pursuant to subsection (4), the commission of agriculture shall provide a detailed explanation of the basis of the denial within 60 days.

(6) Upon identification of unreasonable adverse effects on the environment or public health by a local unit of government as evidenced by a resolution submitted to the department, the department shall hold a local public meeting within 60 days after the submission of the resolution to determine the nature and extent of unreasonable adverse effects on the environment or public health due to the use of pesticides. Within 30 days after the local public meeting, the department shall issue a detailed opinion regarding the existence of unreasonable adverse effects on the environment or public health as identified by the resolution of the local unit of government.

(7) The director may contract with a local unit of government to act as its agent for the purpose of enforcing this part and the rules promulgated pursuant to this part. The department shall have sole authority to assess fees, register and certify pesticide applicators, license commercial applicators and restricted use pesticide dealer firms, register pesticide products, cancel or suspend pesticide registrations, and regulate and enforce all provisions of this part pertaining to the application and use of a pesticide to an agricultural commodity or for the purpose of producing an agricultural commodity.

(8) For any ordinance enacted pursuant to this section, the local unit of government shall provide that persons enforcing the ordinance comply with the training and enforcement requirements as determined by the director. A local unit of government shall reimburse the department for actual costs incurred in training local government personnel.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 172, Imd. Eff. Apr. 18, 1996.

Popular name: Act 451

Popular name: NREPA

324.8329 Order to stop prohibited conduct; proceeding in rem for condemnation; disposition of pesticide or device; award of court costs, fees, storage, and other expenses.

Sec. 8329. (1) When the director has reasonable suspicion that a pesticide or device is distributed, stored, transported, offered for sale, or used in violation of this part, the director may issue an order to stop the prohibited conduct. The person shall immediately comply with the order.

(2) A pesticide or device that is transported, or is in original unbroken packages, or is sold or offered for sale in this state, or is imported from a foreign country, in violation of this part, is liable to be proceeded against in any district court in the district where it is found and seized for confiscation by a process in rem for condemnation if:

(a) In the case of a pesticide, any of the following circumstances exist:

(*i*) It is adulterated or misbranded.

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(*ii*) It is not registered pursuant to this part.

(*iii*) Its labeling fails to bear the information required by FIFRA or by regulations promulgated under FIFRA.

(*iv*) Its coloring is different than that required under FIFRA.

(*v*) Any claims or directions for its use differ from the representations made with its registration.

(b) In the case of a device, it is misbranded.

(c) In the case of a pesticide or device, when used in accordance with the requirements imposed under this part it causes unreasonable adverse effects on the environment.

(3) If the pesticide or device is condemned, it shall be disposed of by destruction or sale as the court directs. If the pesticide or device is sold, the proceeds less the court costs shall be credited to the general fund. A pesticide or device shall not be sold contrary to this part or the laws of the jurisdiction in which it is sold. Upon payment of the costs of the condemnation proceedings and the execution and delivery of a sufficient bond conditioned that it shall not be sold or disposed of contrary to this part or the laws of the jurisdiction in which it is sold, the court may direct that it be delivered to the owner. The proceedings of condemnation cases shall conform as nearly as possible to proceedings in admiralty, except that either party may demand trial by jury of an issue of fact joined in a case, and the proceedings shall be brought by and in the name of the people of the state.

(4) Court costs, fees, storage, and other proper expenses shall be awarded against the person, intervening as claimant of the pesticide or device upon entry of a decree of condemnation.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8330 Containers; labels; colored or discolored pesticides; handling, storage, display, or transportation of pesticides; adding or taking substance from pesticide; filing and inspection of shipping data.

Sec. 8330. (1) Pesticides distributed, transported, sold, or exposed or offered for sale in this state shall be in the registrant's or manufacturer's unbroken immediate container and shall have attached to it a label conforming to the labeling requirements as prescribed under this part or the rules promulgated under this part. The unbroken container requirement of this subsection does not apply to an applicator who is transporting a pesticide between the place of storage and the area of application.

(2) A pesticide container shall be free from damage that renders the pesticide unsafe.

(3) A pesticide that is required to be colored shall not be distributed, sold, exposed, or offered for sale unless the pesticide is colored as prescribed.

(4) A pesticide shall be handled, stored, displayed, or transported so that it will not endanger human beings and the environment or endanger food, feed, or other products that are stored, displayed, or transported with the pesticide.

(5) A person shall not detach, alter, deface, or destroy any portion of a label or labeling provided for in this part or rules promulgated under this part, or add a substance to or take a substance from a pesticide in a manner that may defeat the purpose of this part or FIFRA.

(6) A pesticide vendor shall keep on file, subject to inspection by an authorized agent of the director for a period of 1 year, all invoices, freight bills, truckers' receipts, waybills, and similar shipping data pertaining to pesticides that would establish date and origin of the shipments.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8331 False information; resisting, impeding, or hindering director.

Sec. 8331. A person shall not give false information in a matter pertaining to this part, or resist, impede, or hinder the director or his or her authorized representatives in the discharge of their duties.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8332 Hearings.

Sec. 8332. A person aggrieved by an order issued pursuant to this part may request a hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to

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24.328 of the Michigan Compiled Laws.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8333 Violation; administrative fine; warning; action to recover fine; misdemeanors; injunction; action by attorney general; compliance as affirmative defense; gross negligence; applicability of revised judicature act.

Sec. 8333. (1) A person who violates this part is subject to the penalties and remedies provided in this part regardless of whether he or she acted alone or through an employee or agent.

(2) The director, upon finding after notice and an opportunity for a hearing that a person has violated or attempted to violate any provision of this part, may impose an administrative fine of not more than $1,000.00 for each violation of this part.

(3) If the director finds that a violation or attempted violation occurred despite the exercise of due care or did not result in significant harm to human health or the environment, the director may issue a warning instead of imposing an administrative fine.

(4) The director shall advise the attorney general of the failure of a person to pay an administrative fine imposed under this section. The attorney general may bring an action in a court of competent jurisdiction for the failure to pay an administrative fine imposed under this section.

(5) A person who violates this part or attempts to violate this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $5,000.00, or both, for each offense.

(6) The director may bring an action to enjoin a violation of this part or an attempted violation of this part in a court of competent jurisdiction of the county in which the violation occurs or is about to occur.

(7) The attorney general may file a civil action in which the court may impose on any person who violates this part or attempts to violate this part a civil fine of not more than $5,000.00 for each violation or attempted violation. In addition, the attorney general may bring an action in circuit court to recover the reasonable costs of the investigation from any person who violated this part or attempted to violate this part. Money recovered under this subsection shall be forwarded to the state treasurer for deposit into the pesticide control fund created in section 8318.

(8) In defense of an action filed under this section, in addition to any other lawful defense, a person may present evidence as an affirmative defense that, at the time of the alleged violation of this part or attempted violation of this part, he or she was in compliance with label directions and with this part and rules promulgated under this part at the time of the alleged violation.

(9) A civil cause of action does not arise for injuries to any person or property if a private agricultural applicator, or a registered applicator who stores, handles, or applies pesticides only for a private agricultural purpose, was not grossly negligent and stored, handled, or applied pesticides in compliance with this part, rules promulgated under this part, and the pesticide labeling.

(10) Applicable provisions of the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948, apply to civil actions filed pursuant to this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Eff. Sept. 3, 2002.

Popular name: Act 451

Popular name: NREPA

324.8334 Exemptions from penalties.

Sec. 8334. The penalties provided for violations of this part do not apply to any of the following:

(a) A carrier while lawfully engaged in transporting a pesticide within this state, if the carrier, upon request, permits the director to copy all records showing the transactions in and movement of the pesticide or devices.

(b) Public officials of this state and the federal government while engaged in the performance of their official duties in administering the state or federal pesticide laws or regulations.

(c) A person who ships a substance or mixture of substances being tested in which the only purpose is to determine its toxicity or other properties and from the use of which the user does not expect to receive any pest control benefit.

(d) The shipment or movement of an unregistered or canceled pesticide for the specific purposes of disposal or storage.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

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Popular name: NREPA

324.8335 Probable cause as precluding recovery of damages.

Sec. 8335. A court shall not allow the recovery of damages from an administrative action taken or an order stopping the sale or use or requiring seizure if the court finds that there was probable cause for the action or order.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8336 Effect of part on other civil or criminal liability; act or omission occurring before June 25, 1976.

Sec. 8336. (1) This part does not terminate or in any way modify any liability, civil or criminal, which is in existence on June 25, 1976.

(2) For the purposes of determining any penalty or liability in respect to an act or omission occurring before June 25, 1976, former Act No. 297 of the Public Acts of 1949, and former Act No. 233 of the Public Acts of 1959 shall apply.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

PART 85
FERTILIZERS

324.8501 Definitions; A to T.

Sec. 8501. As used in this part:

(a) "Adulterated product" means a product that contains any deleterious or harmful substance in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil, or water when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use that may be necessary to protect plant life, animals, humans, aquatic life, soil, or water are not shown on the label.

(b) "Agricultural use" means that term as defined in section 36101.

(c) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(d) "Aquifer sensitivity" means a hydrogeologic function representing the inherent abilities of materials surrounding the aquifer to attenuate the movement of nitrogen fertilizers into that aquifer.

(e) "Aquifer sensitivity region" means an area in which aquifer sensitivity estimations are sufficiently uniform to warrant their classification as a unit.

(f) "Biosolids" means a product consisting in whole or in part of sewage sludge that is distributed to the public and that is disinfected by means of composting, pasteurization, wet air oxidation, heat treatment, or other means.

(g) "Brand or product name" means a term, design, or trademark used in connection with 1 or more grades of fertilizer.

(h) "Bulk fertilizer" means fertilizer distributed in a nonpackaged form.

(i) "Custom blend" means a fertilizer blended according to specifications provided to a blender in a soil test nutrient recommendation or blended as specifically requested by the consumer prior to blending.

(j) "Department" means the department of agriculture and rural development.

(k) "Director" means the director of the department or his or her designee.

(*l*) "Distribute" means to import, consign, sell, barter, offer for sale, solicit orders for sale, or otherwise supply fertilizer for sale or use in this state.

(m) "Distributor" means any person who distributes fertilizer for sale or use in this state.

(n) "Fertilizer" means a substance containing 1 or more recognized plant nutrients, which substance is used for its plant nutrient content and which is designed for use, or claimed to have value, in promoting plant growth. Fertilizer does not include unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other materials exempted by rules promulgated under this part.

(o) "Fertilizer material" means a fertilizer to which 1 or more of the following apply:

(*i*) Contains not more than 1 of the following as primary nutrients:

(A) Total nitrogen (N).

(B) Available phosphate (P_2O_5).

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(C) Soluble potash (K_2O).

(*ii*) Has 85% or more of its plant nutrient content present in the form of a single chemical compound.

(*iii*) Is derived from a plant or animal residue or by-product or natural material deposit that has been processed in such a way that its content of plant nutrients has not been materially changed except by purification and concentration.

(p) "Fund" means the fertilizer control fund created under section 8514.

(q) "Grade" means the percentage guarantee of total nitrogen (N), available phosphate (P_2O_5), and soluble potash (K_2O), of a fertilizer. Grade shall be stated in the same order given in this subdivision. Indication of grade does not apply to peat or peat moss or soil conditioners.

(r) "Groundwater" means underground water within the zone of saturation.

(s) "Groundwater stewardship practices" means any of a set of voluntary practices adopted by the commission of agriculture and rural development pursuant to part 87, designed to protect groundwater from contamination by fertilizers.

(t) "Guaranteed analysis" means the minimum percentage of each plant nutrient guaranteed or claimed to be present.

(u) "Impervious surface" means a paved highway, street, sidewalk, parking lot, driveway, or other outdoor structure that prevents infiltration of water into the soil.

(v) "Label" means any written, printed, or graphic matter on or attached to packaged fertilizer or used to identify fertilizer distributed in bulk or held in bulk storage.

(w) "Labeling" means all labels and other written, printed, electronic, or graphic matter upon or accompanying any fertilizer at any time, and includes advertising, sales literature, brochures, posters, and internet, television, and radio announcements used in promoting the sale of that fertilizer.

(x) "Licensee" means the person who receives a license to manufacture or distribute fertilizers under this part.

(y) "Lot" means an identifiable quantity of fertilizer that can be sampled officially according to methods adopted under section 8510, that is contained in a single vehicle, or that is delivered under a single invoice.

(z) "Manipulated manure" means animal or vegetable manure that is ground, pelletized, mechanically dried, packaged, supplemented with plant nutrients or other substances other than phosphorus, or otherwise treated in a manner to assist with the sale or distribution of the manure as a fertilizer or soil or plant additive.

(aa) "Manufacture" means to process, granulate, compound, produce, mix, blend, or alter the composition of fertilizer or fertilizer materials.

(bb) "Natural fertilizer" means a substance composed only of natural organic, natural inorganic, or both types of fertilizer materials and natural fillers.

(cc) "Sewage sludge" means sewage sludge generated in the treatment of domestic sewage, other than only septage or industrial waste.

(dd) "Turf" means land, including residential, commercial, or industrial property, golf courses, or publicly owned land, that is planted in closely mowed, managed grass, except land used in the operation of a commercial farm.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 276, Imd. Eff. July 27, 1998;—Am. 2006, Act 503, Eff. Mar. 30, 2007;—Am. 2008, Act 13, Imd. Eff. Feb. 29, 2008;—Am. 2010, Act 299, Imd. Eff. Dec. 16, 2010;—Am. 2013, Act 151, Imd. Eff. Nov. 5, 2013.

Popular name: Act 451

Popular name: NREPA

324.8501a Definitions; M to U.

Sec. 8501a. As used in this part:

(a) "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials.

(b) "Nitrogen fertilizer" means a fertilizer that contains nitrogen as a component.

(c) "Official sample" means a sample of fertilizer taken by a representative of the department of agriculture in accordance with acceptable sampling methods under section 8510.

(d) "Order" means a cease and desist order issued under section 8511.

(e) "Package" or "packaged" means any type of product regulated by this part that is distributed in individual labeled containers.

(f) "Percent" and "percentage" mean the percentage by weight.

(g) "Person" means an individual, partnership, association, firm, limited liability company, or corporation.

(h) "Primary nutrients" means total nitrogen, available phosphate, or soluble potash, or any combination of those nutrients.

(i) "Registrant" means the person who registers a product under this part.

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(j) "Soil conditioner" means any substance that is used or intended for use to improve the physical characteristics of soil, including, but not limited to, materials such as peat moss and peat products, composted products, synthetic soil conditioners, or other products that are worked into the soil or are applied on the surface to improve the properties of the soil for enhancing plant growth. Soil conditioner does not include guaranteed plant nutrients, agricultural liming materials, pesticides, unmanipulated animal or vegetable manures, hormones, bacterial inoculants, and products used in directly influencing or controlling plant growth. A soil conditioner for which claims are made of nutrient value is considered a fertilizer for the purposes of this part.

(k) "Specialty fertilizer" means any fertilizer distributed primarily for nonfarm use, such as use in connection with home gardens, lawns, shrubbery, flowers, golf courses, parks, and cemeteries, and may include fertilizers used for research or experimental purposes.

(*l*) "Ton" means a net weight of 2,000 pounds avoirdupois.

(m) "Use" means the loading, mixing, applying, storing, transporting, or disposing of a fertilizer.

History: Add. 2006, Act 503, Eff. Mar. 30, 2007.

Compiler's note: Act 451

Popular name: NREPA

324.8502 Label; invoice.

Sec. 8502. (1) A packaged fertilizer distributed in this state, including packaged mixed fertilizer and soil conditioner, shall have placed on or affixed to the package or container a label setting forth in clearly legible and conspicuous form the following:

(a) The net weight of the contents of the package, except that soil conditioners, peat, or peat moss may be designated by volume.

(b) Brand or product name.

(c) Name and address of the licensed manufacturer or distributor.

(d) Grade. However, the grade is not required when no primary nutrients are claimed. This subdivision does not apply to peat or peat moss, material sold as a soil conditioner, or fertilizer for which no primary nutrients are claimed.

(e) Guaranteed analysis. This subdivision does not apply to peat or peat moss or material sold as a soil conditioner.

(2) A fertilizer distributed in this state in bulk, except a custom blend, shall be accompanied by a written or printed invoice or statement to be furnished to the purchaser at the time of delivery containing in clearly legible and conspicuous form the following information:

(a) Name and address of the licensed manufacturer or distributor.

(b) Name and address of purchaser.

(c) Date of sale.

(d) Brand or product name.

(e) Grade. However, the grade is not required when no primary nutrients are claimed.

(f) Guaranteed analysis.

(g) Net weight.

(3) A custom blend shall be accompanied by a written or printed invoice or statement to be furnished to the purchaser at the time of delivery containing in clearly legible and conspicuous form the following information:

(a) Name and address of the licensed manufacturer or distributor.

(b) Name and address of purchaser.

(c) Date of sale.

(d) Either the net weight and guaranteed analysis of the custom blend or the guaranteed analysis and net weight of each material used in the formulation of the custom blend or both.

(4) Fertilizer in bulk storage shall be identified with a label attached to the storage bin or container giving the name and address of the licensed manufacturer or distributor and the name and grade of the product.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007.

Popular name: Act 451

Popular name: NREPA

324.8503 Order and form of guaranteed analysis; minimum percentage of plant nutrients; additional plant nutrients; other beneficial compounds or substances.

Sec. 8503. (1) The guaranteed analysis shall show the minimum percentage of plant nutrients claimed in

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the following order and form:

(a) Total nitrogen (N). _____%

Available phosphate (P_2O_5). _____%

Soluble potash (K_2O). _____%

(b) When applied to mixed fertilizers, grade shall be given in whole numbers only. However, specialty fertilizers with a guarantee of less than 1% of total nitrogen, available phosphate, and soluble potash may use fractional units. Fertilizer materials, bone meal, manures, and similar materials may be guaranteed in fractional units.

(c) When applied to custom blends, grade can either be given in whole numbers or in numbers expressed to the nearest 1/10 of a percent in the form of a decimal in the analysis.

(d) For unacidulated mineral phosphatic material and basic slag, bone, tankage, and other organic phosphatic materials, the total phosphate or degree of fineness, or both, may also be guaranteed.

(2) Additional plant nutrients, other than nitrogen, phosphorus, and potassium, claimed to be present in any form or manner shall be guaranteed on the elemental basis, at levels not less than those established by rules. Other beneficial compounds or substances, determinable by laboratory methods, may be guaranteed if approved by the director.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007.

Popular name: Act 451

Popular name: NREPA

324.8504 License to manufacture or distribute fertilizer; fee; application; beneficial use by-product intended for beneficial use 3; notice of additional distribution points; exceptions; expiration; operation of business located outside of state.

Sec. 8504. (1) A person shall not manufacture or distribute fertilizer in this state, except specialty fertilizer and soil conditioners, until the appropriate water quality protection fee provided in section 8715 has been submitted, and except as authorized by a license to manufacture or distribute issued by the department pursuant to part 13. An application for a license shall be accompanied by a fee of $100.00 for each of the following:

(a) Each fixed location at which fertilizer is manufactured in this state.

(b) Each mobile unit used to manufacture fertilizer in this state.

(c) Each location out of this state that applies labeling showing an out-of-state origin of fertilizer distributed in this state to nonlicensees.

(2) An application for a license to manufacture or distribute fertilizer shall include all of the following:

(a) The name and address of the applicant.

(b) The name and address of each bulk distribution point in this state not licensed for fertilizer manufacture or distribution. The name and address shown on the license shall be shown on all labels, pertinent invoices, and bulk storage for fertilizers distributed by the licensee in this state.

(3) If the fertilizer is a beneficial use by-product intended for beneficial use 3 under part 115, the application shall also include the information identified in section 11551(7).

(4) The licensee shall inform the director in writing of additional distribution points established during the period of the license.

(5) A distributor is not required to obtain a license if the distributor is selling fertilizer of a distributor or a manufacturer licensed under this part.

(6) All licenses to manufacture or distribute fertilizer expire on December 31 of each year.

(7) A person licensed under this section that operates from a business location outside this state shall do either of the following:

(a) Continuously maintain in this state a registered office and a resident agent, which agent may be an individual resident in this state whose business office or residence is identical with the registered office, a domestic corporation or limited liability company, or a foreign corporation or limited liability company authorized to transact business in this state and having a business office identical with the registered office. The person licensed under this section shall file with the department the name, address, and telephone number of the resident agent and shall maintain and make available records required by this part and part 87.

(b) Maintain and make available to the department records required by this part and part 87 and pay all costs incurred in auditing the records if they are held at an out-of-state location.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

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Popular name: NREPA

324.8505 Distribution of specialty fertilizer or soil conditioner; registration; application; labels to accompany application; beneficial use by-product intended for beneficial use 3; copy of registration approval; expiration; fees; labeling blended soil conditioners; operation of business located outside of state.

Sec. 8505. (1) A person shall not distribute a specialty fertilizer or soil conditioner unless it is registered with the department. An application for registration listing each brand and product name of each grade of specialty fertilizer or soil conditioner shall be made on a form furnished by the director. An application shall be accompanied with the fees described in subsection (4) for each brand and product name of each grade. Labels for each brand and product name of each grade shall accompany the application.

(2) If the specialty fertilizer or soil conditioner is a beneficial use by-product intended for beneficial use 3 under part 115, the application shall also include the information identified in section 11551(7).

(3) Upon approval of an application by the director, a copy of the registration approval shall be furnished to the applicant. All registrations expire on December 31 of each year.

(4) A person applying for a registration under subsection (1) shall pay the following annual fees for each brand and product name of each grade:

(a) Registration fee of $25.00.

(b) Appropriate water quality protection fee provided for in section 8715.

(5) A distributor is not required to register a brand of fertilizer that is registered under this part by another person, if the label does not differ in any respect.

(6) A manufacturer or distributor of custom blend specialty fertilizers for home lawns, golf courses, recreational areas, or other nonfarm areas is not required to register each grade distributed but shall license their firm on an application furnished by the director for an annual fee of $100.00 and shall label the fertilizer as provided in section 8502. The label of each fertilizer distributed under this subsection shall be maintained by the manufacturer or distributor for 1 year for inspection by the director.

(7) A manufacturer or distributor of soil conditioners blended according to specifications provided to a blender or blended as specifically requested by the consumer prior to blending shall either register each brand or blend distributed or license its firm on an application furnished by the director for an annual fee of $100.00 and shall label the soil conditioner as provided in section 8502. The label of each soil conditioner distributed under this subsection shall be maintained by the manufacturer or distributor for 1 year for inspection by the director.

(8) A registrant that operates from a business location outside this state shall do either of the following:

(a) Continuously maintain in this state a registered office and a resident agent, which agent may be an individual resident in this state whose business office or residence is identical with the registered office, a domestic corporation or limited liability company, or a foreign corporation or limited liability company authorized to transact business in this state and having a business office identical with the registered office. The registrant shall file with the department the name, address, and telephone number of the resident agent and shall maintain and make available records required by this part and part 87.

(b) Maintain and make available to the department records required by this part and part 87 and pay all costs incurred by the department in auditing the records if they are held at an out-of-state location.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8506 Inspection fee; tonnage reports as basis of payment; waiver; penalty; unpaid fees and penalties as basis of judgment; responsibility for reporting tonnage and paying inspection fee; deposit of money collected.

Sec. 8506. (1) An inspection fee of 35 cents per ton shall be paid to the department for all fertilizers or soil conditioners sold or distributed in this state. For peat or peat moss, the inspection fee shall be 2 cents per cubic yard. This fee does not apply to registered specialty fertilizers or soil conditioners sold or distributed only in packages of 10 pounds or less.

(2) Payment of the inspection fee shall be made on the basis of tonnage reports setting forth the number of tons of each grade of fertilizer and soil conditioner and the number of cubic yards of peat or peat moss sold or distributed in this state. The reports shall cover the periods of the year and be made in a manner specified by the director in rules, and shall be filed with the department not later than 30 days after the close of each period. The time may be extended for cause for an additional 15 days only on written request to, and approval

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by, the department. Remittance to cover the inspection fee shall accompany each tonnage report. Payments due of less than $5.00 are waived, and refunds of less than $5.00 will not be processed, unless requested in writing. For any report not filed with the department by the due date, a penalty of $50.00 or 10% of the amount due, whichever is greater, shall be assessed. Unpaid fees and penalties constitute a debt and become the basis of a judgment against the licensee. Records upon which the statement of tonnage is based, including those described in this section and section 8715, are subject to department audit.

(3) When more than 1 person is involved in the distribution of fertilizer or soil conditioners, the last person who is licensed or has the fertilizer or soil conditioner registered and who distributes to a nonlicensee or nonregistrant is responsible for reporting the tonnage and paying the inspection fee.

(4) Money collected by the department under this section shall be forwarded to the state treasurer for deposit into the fund.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8506a Audits.

Sec. 8506a. The director may conduct audits to determine compliance with this part. In conducting audits under this part, the director may contract for the performance of the audit.

History: Add. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Compiler's note: NREPA

324.8507 Records; disclosure of information.

Sec. 8507. (1) Each licensee and registrant shall maintain for a period of 3 years a record of quantities and grades of fertilizer and soil conditioner sold or distributed by the licensee or registrant and shall make the records available for inspection and audit during normal business hours on request of the department. Each distributor shall maintain for a period of 3 years shipping data such as invoices and freight bills pertaining to fertilizer and soil conditioner that establish date and origin of the shipment, and shall make the records available for inspection and audit on request of the department.

(2) Tonnage payments, tonnage reports, or other information furnished or obtained under this part shall not be disclosed in a way that will divulge the business operations of any 1 person.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007.

Popular name: Act 451

Popular name: NREPA

324.8508 Construction and application of part.

Sec. 8508. (1) This part does not require the payment of inspection fees for sales or exchanges of fertilizers or soil conditioners between manufacturers who mix fertilizer or soil conditioner materials for sale, or prevent the free and unrestricted shipment of fertilizers or soil conditioners for further processing to manufacturers licensed under this part.

(2) This part does not apply to a carrier in respect to a fertilizer or soil conditioner delivered or consigned to it by others for transportation in the ordinary course of its business as a carrier.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.8509 Prohibitions.

Sec. 8509. A person shall not do any of the following:

(a) Sell or distribute fertilizer or soil conditioner in violation of the requirements of this part or the rules promulgated under this part.

(b) Make a guarantee, claim, or representation in connection with the sale of fertilizer or soil conditioner, or in its labeling, which is false, deceptive, or misleading.

(c) Manufacture or distribute a fertilizer or soil conditioner without a license as required by this part or distribute a specialty fertilizer or soil conditioner unless registered as required by this part.

(d) Make a false or misleading statement in an application for a license or in an inspection fee or statistical report or in any other statement or report filed with the department pursuant to this part.

(e) Attach or cause to be attached an analysis stating that a fertilizer contains a higher percentage of a plant

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nutrient than it in fact contains.

(f) Distribute an adulterated product.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007.

Popular name: Act 451

Popular name: NREPA

324.8510 Inspecting, sampling, and analyzing fertilizer and soil conditioners; methods; rules; access to premises; stopping conveyances; submission of information to department; confidentiality.

Sec. 8510. (1) The director shall inspect, sample, and analyze fertilizers and soil conditioners distributed within this state at a time and place and to the extent necessary to determine compliance with this part.

(2) The methods of sampling and analysis under subsection (1) shall be those as established by the association of American plant food control officials or the association of analytical communities, international, as those standards exist on the effective date of the amendatory act that added this subsection, and are incorporated by reference. The department may promulgate rules to update these standards. In cases not covered by such methods, or in cases where methods are available in which improved applicability has been demonstrated, the director may adopt, by rule, such other methods as are considered appropriate.

(3) Department representatives and inspectors shall have free access during regular business hours and extended operating hours to all premises where fertilizers or soil conditioners are manufactured, sold, or stored, and to all trucks or other vehicles and vessels used in the transportation of a fertilizer or soil conditioner in this state, to determine compliance with this part. Department representatives and inspectors may stop any conveyance transporting fertilizer or soil conditioner for the purpose of inspecting and sampling the products and examining their labeling.

(4) A manufacturer or distributor of fertilizer or soil conditioner shall submit to the department, upon request, product samples, copies of labeling, or any other data or information that the department may request concerning composition and claims and representations made for fertilizers and soil conditioners manufactured or distributed by the manufacturer or distributor within this state.

(5) The director may, upon reasonable notice, require a person to furnish any information relating to the identification, nature, and quantity of fertilizers that are or have been used on a particular site and to current or past practices that may have affected groundwater quality. Information required under this subsection is confidential business information and is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007.

Popular name: Act 451

Popular name: NREPA

324.8511 Selection of sample from package or bulk lot for comparison with label; order to cease and desist; seizing, or stopping sale of, fertilizer or soil conditioner; conditions; filing action with court.

Sec. 8511. (1) The director, by a duly authorized agent, may select from any package or bulk lot of commercial fertilizer or soil conditioner exposed for sale in this state a sample to be used for the purposes of an official analysis for comparison with the label affixed to the package or bulk lot on sale. The director may at any time order a person to cease and desist from manufacturing, storing, distributing, selling, or registering a product regulated by this part, or may seize or stop the sale of a fertilizer or soil conditioner that is misbranded or adulterated, fails to meet a label claim or guarantee, is being manufactured or distributed by an unlicensed person, or otherwise fails to comply with this part.

(2) An order shall be written and shall inform the manufacturer, storage operator, distributor, seller, or registrant of the grounds for issuance of the order. The person receiving the order shall immediately comply with the order. Failure to comply shall subject the person to the penalty imposed under this part.

(3) The director shall rescind the order immediately upon being satisfied by inspection of compliance with the order. The inspection shall be conducted as soon as possible at the verbal or written request of the responsible party. The rescinding order of the director may be verbal and the person may rely on the verbal rescinding order. However, a verbal order shall be followed by a written rescinding order.

(4) The director may issue and enforce a written order prohibiting the sale, use, or removal of a product regulated by this part to the owner or custodian of any product or product lot and requiring the product to be held by the owner or custodian at a designated place when the director finds that the product is being distributed in violation of this part. The order remains in effect until the director determines that the person is

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complying with the law or until the violation has been otherwise legally disposed of by written authority. The director shall release the product for sale, use, or removal upon compliance with this part and payment of all costs and expenses incurred in connection with the issuance and enforcement of the order.

(5) Any product or product lot not in compliance with this part is subject to seizure upon an action filed by the director in a court of competent jurisdiction in the county in which the product is located. If the court finds the product to be in violation of this part and orders the condemnation of the product, the product shall be disposed of in any manner consistent with the quality of the product and the laws of this state except that the disposition of the product shall not be ordered by the court without first providing the claimant an opportunity to petition the court for release of the product or for permission to process or relabel the product to bring it into compliance with this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 276, Imd. Eff. July 27, 1998.

Popular name: Act 451

Popular name: NREPA

324.8512 Nitrates in groundwater exceeding certain limits associated with aquifer sensitivity or fertilizer use; educational materials provided to fertilizer users; authority of department director; eligibility of regional stewardship to receive certain grants; authorization to land-apply materials containing fertilizers at agronomic rates.

Sec. 8512. (1) Upon confirming the presence of nitrate in groundwater in concentration exceeding 50% of the maximum contaminant level for nitrates in 20% of drinking water wells associated with an aquifer sensitivity region or fertilizer use activity, the director of the department shall provide educational materials to fertilizer users within that region and may do 1 or more of the following:

(a) Establish a regional stewardship team to assist in the coordination of local activities designed to prevent further contamination of groundwater and to identify all probable sources of nitrate.

(b) Conduct further monitoring to determine the concentration and spatial distribution of nitrates in the aquifer.

(c) Perform an evaluation of activities in the monitoring region to determine the sources of nitrate that may have contributed to the contamination.

(d) Implement a stewardship program in the aquifer sensitivity region pursuant to part 87.

(e) Assist the regional stewardship team in designing a regional plan to prevent further contamination of groundwater by fertilizer use activities, which plan must include an assessment of all probable sources of nitrates.

(f) Establish a program that provides incentives for users to increase nitrogen use efficiency.

(2) Upon approval of a regional plan by the director of the department, the regional stewardship team is eligible to receive grants from the freshwater protection fund established by part 87.

(3) The director of the department may, upon written request, authorize persons to land-apply materials containing fertilizers at agronomic rates. This authorization shall prescribe appropriate operational control activities to protect the application location and shall identify both the location of remediation and the location or locations where such a land application will take place.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.8512b Fertilizer containing phosphate; application to turf; requirements.

Sec. 8512b. (1) Except as provided in subsection (2), (3), (4), or (5), a person shall not apply to turf a fertilizer labeled as containing the plant nutrient available phosphate (P_2O_5).

(2) If a tissue, soil, or other test performed within the preceding 3 years by a laboratory experienced in conducting tests for phosphorus that adhere to recognized national standards indicates that the level of available phosphate (P_2O_5) in the soil is deficient to support healthy turf grass growth or establishment, a person may apply fertilizer to the turf at an application rate for available phosphate not exceeding that necessary to correct the deficiency.

(3) If new turf is being established using seed or sod, it is the first growing season for the turf grass at the site, and a test described in subsection (2) has not been performed, a person may apply fertilizer to the turf at an application rate for available phosphate (P_2O_5) not exceeding the standard rate for new turf grass establishment, which shall be specified by the director after consultation with the Michigan state university extension.

(4) A person may apply biosolids, a natural fertilizer, or a manipulated manure to turf at a rate of not more

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than 0.25 pounds of phosphorus per 1,000 square feet at any 1 time.

(5) In addition, a person may apply fertilizer labeled as containing the plant nutrient available phosphate (P_2O_5) to a golf course if 1 or more of the following apply:

(a) The golf course has been certified by an organization as a result of the golf course's staff having successfully completed a training program approved by the director. The director shall approve a training program if it is a continuing program, adequately addresses best management practices for use of turf fertilizer containing available phosphate, and requires trainees to demonstrate successful implementation of those best management practices.

(b) If a tissue, soil, or other test performed within the preceding 3 years by a laboratory experienced in conducting tests for phosphorus that adhere to recognized national standards indicates that the level of available phosphate in the soil is deficient to support healthy golf course turf grass growth or establishment, the golf course may apply fertilizer at an application rate for available phosphate not exceeding that necessary to correct the deficiency.

(c) If new turf is being established using seed or sod, it is the first growing season for the turf grass at the site, and a test described in subdivision (b) has not been performed, a golf course may apply fertilizer to the turf at an application rate for available phosphate (P_2O_5) not exceeding the rate necessary for new golf course turf grass establishment.

(6) A person shall not apply fertilizer to turf within 15 feet of any surface water, unless 1 or more of the following apply:

(a) A continuous natural vegetative buffer at least 10 feet wide separates the turf from the surface water.

(b) A spreader guard, deflector shield, or drop spreader is used when applying the fertilizer, and the fertilizer is not applied within 3 feet of the surface water.

(7) A person shall not clean a fertilizer spreader that is used to apply fertilizer to turf in a manner that allows wash water from the spreader to discharge directly into waters of this state, including, but not limited to, a drain under the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.

(8) The department shall post information concerning the requirements of subsections (1) to (5) on its website and publicize the availability of that information by whatever means the department determines to be appropriate.

History: Add. 2010, Act 299, Imd. Eff. Dec. 16, 2010;—Am. 2013, Act 151, Imd. Eff. Nov. 5, 2013.

Popular name: Act 451

Popular name: NREPA

324.8512f Release of fertilizer on impervious turf; application of fertilizer on frozen or saturated turf.

Sec. 8512f. (1) A person who releases fertilizer on an impervious surface shall do both of the following:

(a) Promptly contain the fertilizer.

(b) Either legally apply the fertilizer to turf or another appropriate site or return the fertilizer to an appropriate container.

(2) A person shall not apply a fertilizer to turf if the soil is frozen or saturated with water.

History: Add. 2010, Act 299, Imd. Eff. Dec. 16, 2010.

324.8512g Residential uses of phosphorus; consumer information on use restrictions and recommended best practices.

Sec. 8512g. The department, in consultation with the fertilizer industry representatives, fertilizer retailers, statewide environmental organizations, lake groups, and other interested parties, may approve consumer information on use restrictions and recommended best practices for lawn fertilizer containing available phosphate (P_20_5), and on best management practices for other residential uses of phosphorus. The information shall be in a format and include content suitable for use by the general public or posting and distribution at retail points of sale of turf fertilizer.

History: Add. 2010, Act 299, Imd. Eff. Dec. 16, 2010.

324.8512h Fertilizer advisory committee; membership; terms; removal; vacancy; meetings; quorum; duties; meetings subject to open meetings act; "committee" defined.

Sec. 8512h. (1) The fertilizer advisory committee is created within the department. The committee shall be composed of the following members:

(a) The director of the department of agriculture and rural development.

(b) Two members representing the fertilizer industry.

(c) One member representing the specialty fertilizer industry.

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(d) Four members representing farmers and other agricultural organizations.

(e) One member from the United States Department of Agriculture Natural Resources Conservation Service.

(f) One member who is a certified crop advisor.

(g) One member representing conservation districts.

(h) The director of Michigan State University AgBioResearch.

(i) One member representing the largest statewide land conservancy in this state.

(2) The members of the committee may designate an authorized representative or substitute to represent them on the committee. Of the members first appointed by the director, 4 shall serve for 1 year, 4 for 2 years, and 4 for 3 years. Thereafter, an appointment shall be for 3 years. The director shall remove any member who is absent, either personally or through a designated representative or substitute, for 4 or more consecutive meetings. Vacancies shall be filled for the balance of an unexpired term. The committee shall meet on the call of the director, who shall serve as chairperson. The director shall call a meeting of the committee upon request of 2 or more members. A majority of the members of the committee constitute a quorum.

(3) The committee shall advise the director on the research funded under section 8514(4)(c).

(4) All meetings of the committee shall be conducted pursuant to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(5) As used in this section, "committee" means the fertilizer advisory committee created in subsection (1).

History: Add. 2015, Act 118, Eff. Oct. 1, 2015.

Compiler's note: Act 451

Compiler's note: NREPA

324.8513 Rules; bulk storage of fertilizers; exemption.

Sec. 8513. (1) The department may promulgate rules regarding the bulk storage of fertilizers.

(2) If storage of a material used as a beneficial use by-product for beneficial use 3 under part 115 meets the storage requirements of that part, then the storage is exempt from regulation no. 641, commercial fertilizer bulk storage, R 285.641.1 to R 285.641.18 of the Michigan administrative code.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2014, Act 178, Eff. Sept. 16, 2014.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 285.641.1 et seq. and R 285.642.1 et seq. of the Michigan Administrative Code.

324.8514 Fertilizer control fund; creation; deposits; money remaining in fund; lapse; expenditures; grants to local government agencies, institutions of higher education, or nonprofit organizations; notice to legislature.

Sec. 8514. (1) The fertilizer control fund is created within the state treasury.

(2) The state treasurer shall receive for deposit in the fund all fees, administrative or civil fines, and payments for the costs of investigations incurred by the department collected under this part. In addition, the state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall expend money from the fund, upon appropriation, only for 1 or more of the following purposes:

(a) The administration and enforcement of this part.

(b) The development of training programs to ensure the proper use and storage of fertilizer.

(c) For research necessary to ensure the adoption and implementation of practices that optimize nutrient use efficiency, ensure soil fertility, and address environmental concerns with regard to fertilizer use. Until December 31, 2019, not less than 40% of the inspection fees collected with section 8506(1) shall be used for purposes of this subdivision.

(5) The department shall not provide grants with money from the fund to local government agencies, institutions of higher education, or nonprofit organizations unless the department provides notice of the grant to the senate and house appropriations subcommittees and the senate and house fiscal agencies at least 10 days before the grant is issued.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

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Popular name: Act 451

Popular name: NREPA

324.8515 Revocation or refusal of license or registration; grounds; hearing; exception for refusal to sell ammonium nitrate fertilizer.

Sec. 8515. (1) The director of the department may revoke the license of a manufacturer or distributor or the registration of a fertilizer product or soil conditioner, or may refuse to license a manufacturer or distributor or to register a fertilizer product or soil conditioner, upon satisfactory evidence that the licensee has engaged in fraudulent or deceptive practices or has evaded or attempted to evade this part or the rules promulgated under this part.

(2) A license or registration shall not be revoked or refused until the licensee or applicant has been given the opportunity by the director of the department to appear for a hearing.

(3) The department shall not suspend or revoke the license of a distributor or manufacturer who refuses to sell ammonium nitrate fertilizer to a person who fails to comply with the request for information required under section 8518 or who refuses to sell ammonium nitrate fertilizer to a person who purchases that fertilizer out of season, in unusual amounts, or under a pattern or circumstances considered unusual, as described in section 8518.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2005, Act 68, Imd. Eff. July 11, 2005.

Popular name: Act 451

Popular name: NREPA

324.8516 Enforcement; rules.

Sec. 8516. The director of the department shall enforce this part and may promulgate rules.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.8517 Local ordinance, regulation, or resolution; preemption; adoption; enforcement; identification of unreasonable adverse effects; local public meeting; contract by director with local government; compliance with training and enforcement requirements; application of fertilizer containing phosphate.

Sec. 8517. (1) Except as otherwise provided in this section, this part preempts any local ordinance, regulation, or resolution that would duplicate, extend, or revise in any manner the provisions of this part. Except as otherwise provided for in this section, a local unit of government shall not adopt, maintain, or enforce an ordinance, regulation, or resolution that contradicts or conflicts in any manner with this part.

(2) If a local unit of government is under contract with the department to act as its agent or the local unit of government has received prior written authorization from the department, that local unit of government may adopt an ordinance that is identical to this part and rules promulgated under this part, except as prohibited in subsection (6). The local unit of government's enforcement response for a violation of the ordinance that involves the manufacturing, storage, distribution, sale, or agricultural use of products regulated by this part is limited to issuing a cease and desist order in the manner prescribed in section 8511.

(3) A local unit of government may adopt an ordinance prescribing standards different from those contained in this part and rules promulgated under this part and that regulates the manufacturing, storage, distribution, sale, or agricultural use of a product regulated by this part only under either or both of the following circumstances:

(a) Unreasonable adverse effects on the environment or public health will otherwise exist within the local unit of government, taking into consideration specific populations whose health may be adversely affected within that local unit of government.

(b) The local unit of government has determined that the manufacturing, storage, distribution, sale, or agricultural use of a product regulated by this part within that unit of government has resulted or will result in the violation of other existing state or federal laws.

(4) An ordinance adopted under subsection (2) or (3) shall not conflict with existing state laws or federal laws. An ordinance adopted under subsection (3) shall not be enforced by a local unit of government until approved by the commission of agriculture. The commission of agriculture shall provide a detailed explanation of the basis of a denial within 60 days.

(5) Within 60 days after the legislative body of a local unit of government submits to the department a resolution identifying unreasonable adverse effects on the environment or public health as provided for in subsection (3)(a), the department shall hold a local public meeting to determine the nature and extent of

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unreasonable adverse effects on the environment or public health due to the manufacturing, storage, distribution, sale, or agricultural use of a product regulated by this part. Within 30 days after the local public meeting, the department shall issue a detailed opinion regarding the existence of unreasonable adverse effects on the environment or public health as identified by the resolution of the local unit of government.

(6) The director may contract with a local unit of government to act as its agent for the purpose of enforcing this part and the rules promulgated under this part. The department has sole authority to assess fees, register fertilizer or soil conditioner products, cancel or suspend registrations, and administer and enforce provisions of section 8512.

(7) A local unit of government that adopts an ordinance under subsection (2) or (3) shall require persons enforcing the ordinance to comply with training and enforcement requirements determined appropriate by the director.

(8) Subsection (1) does not prohibit the maintenance or enforcement of an ordinance that regulates or prohibits the application to turf of fertilizer containing the plant nutrient available phosphate (P_2O_5), but only if the ordinance was in effect on the enactment date of the amendatory act that added this subsection.

History: Add. 1998, Act 276, Imd. Eff. July 27, 1998;—Am. 2008, Act 14, Imd. Eff. Feb. 29, 2008;—Am. 2010, Act 299, Imd. Eff. Dec. 16, 2010.

Popular name: Act 451

Popular name: NREPA

324.8518 Ammonium nitrate fertilizer; storage methods; information to be obtained by retailers; records; refusal of retailer to sell.

Sec. 8518. (1) A retailer shall secure at all times ammonium nitrate fertilizer to provide reasonable protection against vandalism, theft, or unauthorized access. Secured storage includes, but is not limited to, the following methods:

(a) Fencing.

(b) Lighting.

(c) Locks.

(2) Retailers shall obtain the following information regarding any sale of ammonium nitrate fertilizer:

(a) Date of sale.

(b) Quantity purchased.

(c) License number of the purchaser's valid state operator's license with the appropriate endorsement, if applicable, or other picture identification card number approved for purchaser identification by the department.

(d) The purchaser's name, current address, and telephone number.

(e) The agency relationship, if any, between the purchaser and the person picking up or accepting delivery of the ammonium nitrate fertilizer.

(3) Records created pursuant to this section shall be maintained by the retailer for a minimum of 2 years on a form or using a format recommended by the department. Records shall be made available for inspection and audit upon request of the director of the department.

(4) Records generated by means of the tracking system established under subsection (2) are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(5) Any retailer of ammonium nitrate fertilizer may refuse to sell to any person attempting to purchase ammonium nitrate fertilizer out of season, in unusual patterns or circumstances, or in unusual amounts as determined by the retailer.

History: Add. 2005, Act 68, Imd. Eff. July 11, 2005.

Popular name: Act 451

Popular name: NREPA

324.8519 Hearing; request.

Sec. 8519. A person aggrieved by an order issued pursuant to this part may request a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: Add. 2006, Act 503, Eff. Mar. 30, 2007.

Compiler's note: Act 451

Popular name: NREPA

324.8520 Violations; penalties; remedies; injunctive action; civil action; defenses; liability for damages; applicability of provisions of revised judicature act.

Sec. 8520. (1) A person who violates or attempts to violate this part or rules promulgated under this part is

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subject to the penalties and remedies provided in this part regardless of whether he or she acted directly or through an employee or agent.

(2) The director, upon finding after notice and an opportunity for an administrative hearing that a person has violated or attempted to violate any provision of this part or a rule promulgated under this part, may impose an administrative fine of not more than $1,000.00 for each violation or attempted violation. A person shall not be fined under both this subsection and subsection (7) for the same violation or attempted violation. A person shall not be fined under this subsection for a violation described in subsection (7)(b).

(3) If the director finds that a violation or attempted violation has occurred despite the exercise of due care or did not result in significant harm to human health or the environment, the director may issue a warning instead of imposing an administrative fine.

(4) The director shall advise the attorney general of the failure of any person to pay an administrative fine imposed under this section. The attorney general shall bring an action in a court of competent jurisdiction to recover the fine.

(5) A person who violates this part or a rule promulgated under this part, or attempts to violate this part or a rule promulgated under this part, is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $5,000.00 for each violation or attempted violation, in addition to any administrative fines imposed. This subsection does not apply to a violation or attempted violation of section 8512b or 8512f.

(6) A person who knowingly and with malicious intent violates or attempts to violate this part or a rule promulgated under this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $25,000.00 for each offense. This subsection does not apply to a violation or attempted violation of section 8512b or 8512f.

(7) A person who violates or attempts to violate section 8512b or 8512f is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than the following for each violation or attempted violation:

(a) Except as provided in subdivision (b), not more than $1,000.00.

(b) Not more than $50.00 if all of the following apply:

(*i*) The violation or attempted violation occurs on a single-family residential parcel, or any other parcel or contiguous parcels with a total of not more than 4 acres of turf.

(*ii*) The violation or attempted violation is committed by the property owner or lessee, a member of his or her family, or a person who resides on the property.

(8) The director may bring an action to enjoin the violation or threatened violation of this part or a rule promulgated under this part in a court of competent jurisdiction of the county in which the violation occurs or is about to occur.

(9) The attorney general may file a civil action in which the court may impose on any person who violates or attempts to violate this part or a rule promulgated under this part, other than section 8512b or 8512f, a civil fine of not more than $5,000.00 for each violation or attempted violation. In addition, the attorney general may bring an action in circuit court to recover the reasonable costs of the investigation from any person who violated this part or attempted to violate this part. Money recovered under this subsection shall be forwarded to the state treasurer for deposit into the fund.

(10) In defense of an action filed under this section for a violation or attempted violation of this part, in addition to any other lawful defense, a person may present evidence as an affirmative defense that, at the time of the alleged violation or attempted violation, he or she was in compliance with this part and rules promulgated under this part.

(11) A person who violates this part is liable for all damages sustained by a purchaser of a product sold in violation of this part. In an enforcement action, a court, in addition to other sanctions provided by law, may order restitution to a party injured by the purchase of a product sold in violation of this part.

(12) A civil action filed pursuant to this part is subject to applicable provisions of the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

History: Add. 2006, Act 503, Eff. Mar. 30, 2007;—Am. 2010, Act 299, Imd. Eff. Dec. 16, 2010.

Compiler's note: Act 451

Popular name: NREPA

324.8521 Penalties and sanctions; exceptions.

Sec. 8521. The penalties and sanctions provided for violations of this part do not apply to any of the following:

(a) A commercial carrier while lawfully engaged in transporting a commercial fertilizer within this state, if

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the carrier, upon request, permits the director to copy all records showing the transactions in and movement of the commercial fertilizer.

(b) The shipment or movement of any commercial fertilizer considered to be in violation of this part, for the specific purposes of disposal or storage when conducted under the approval of the director.

(c) Public officials of this state and the federal government while engaged in the performance of their official duties in administering this part or rules promulgated under this part.

History: Add. 2006, Act 503, Eff. Mar. 30, 2007.

Compiler's note: Act 451

Popular name: NREPA

324.8522 Finding of probable cause.

Sec. 8522. A court shall not allow the recovery of damages by a person against whom an administrative action was brought resulting in an order stopping the sale or use of fertilizer or fertilizer material or requiring its seizure if the court finds that there was probable cause for the action or order.

History: Add. 2006, Act 503, Eff. Mar. 30, 2007.

Compiler's note: Act 451

Popular name: NREPA

PART 87
GROUNDWATER AND FRESHWATER PROTECTION

324.8701 Meanings of words and phrases.

Sec. 8701. For purposes of this part, the words and phrases defined in sections 8702 to 8705 have the meanings ascribed to them in those sections.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8702 Definitions; A to D.

Sec. 8702. (1) "Activity plan" means a plan for a specific location that identifies all environmental risks and includes a time frame for implementation of conservation practices to address the environmental risks.

(2) "Agronomic rate" means either of the following:

(a) For pesticides, the application of pesticide contaminated materials in such a manner as not to exceed legal labeled rates.

(b) For fertilizers, the application of fertilizer contaminated materials at rates not to exceed those recommended by the Michigan State University Extension, taking all available sources of nutrients into account.

(3) "Analyte" or "analytes" means the material or materials that an analysis is designed to detect either qualitatively or quantitatively.

(4) "Conservation plan" means that term as it is defined in part 82.

(5) "Conservation practices" means that term as it is defined in part 82.

(6) "Confirmation mechanism" means a scientific process for the verification of detection of analytes in groundwater utilizing at least 2 separate water samples collected at time intervals of greater than 14 days from the same groundwater sampling point and analyzed by peer reviewed and authenticated laboratory methodologies.

(7) "Contaminant" means any pesticide or fertilizer originated chemical, radionuclide, ion, synthetic organic compound, microorganism, or other waste that does not occur naturally or that naturally occurs at a lower concentration than detected.

(8) "Contamination" means the direct or indirect introduction into the environment of any contaminant caused in whole or in part by human activity.

(9) "Council" means the environmental assurance advisory council created in section 8708.

(10) "Demonstration project" means a project designed to illustrate the implementation and impact of alternate conservation practices.

(11) "Department" means the department of agriculture and rural development.

(12) "Director" means the director of the department or his or her designee.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

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Popular name: NREPA

324.8703 Definitions; E to M.

Sec. 8703. (1) "Envelope monitoring" means monitoring of groundwater in areas adjacent to properties where groundwater is contaminated to determine the concentration and spatial distribution of the contaminant in the aquifer.

(2) "Farm" means that term as it is defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(3) "Farmer" means a person who owns or operates a farm.

(4) "Fertilizer" means a fertilizer as defined in part 85.

(5) "Fund" means the freshwater protection fund created in section 8716.

(6) "General screening" means monitoring of groundwater for the purpose of determining the presence and concentration of analytes.

(7) "Groundwater" means underground water within the zone of saturation.

(8) "MAEAP" or "Michigan agriculture environmental assurance program" means the Michigan agriculture environmental assurance program provided for in section 8710.

(9) "MAEAP standards" means all of the following as adopted by the commission of agriculture and rural development for the purpose of implementing the Michigan agriculture environmental assurance program:

(a) Conservation practices.

(b) Site-specific nutrient management plan requirements.

(c) Emergency protocols.

(d) Completed environmental risk and benefit assessments.

(e) United States Department of Agriculture Natural Resources Conservation Service practice standards.

(f) Generally accepted agricultural and management practices developed under the right to farm act, 1981 PA 93, MCL 286.471 to 286.474.

(g) Other standards considered appropriate by the director.

(10) "MAEAP-verified farm" means a farm determined by the department as meeting applicable MAEAP standards through an on-site evaluation.

(11) "Maximum contaminant level" means that term as it is defined in title XIV of the public health service act, chapter 373, 88 Stat. 1660, and regulations promulgated under that act.

(12) "Method detection limit" means the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than 0 and is determined from analysis of a sample in a given matrix that contains the analyte.

(13) "Monitoring" means sampling and analysis to determine the levels of pesticides or their breakdown products; fertilizers or their residues; or other analytes as determined by the director.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2013, Act 46, Imd. Eff. June 6, 2013;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8704 Definitions; O, P.

Sec. 8704. (1) "On-site evaluation" means a specific set of criteria used to voluntarily evaluate a farmer's property with regard to determination of potential environmental risks.

(2) "Pesticide" means that term as it is defined in part 83.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8705 Definitions; R to W.

Sec. 8705. (1) "Registrant" means that term as it is defined in part 83.

(2) "Restricted use pesticide" means that term as it is defined in part 83.

(3) "Site-specific nutrient management plan" means a plan designed to assist farmers in achieving MAEAP standards that includes both of the following:

(a) Conservation practices and nutrient management activities that, when implemented as part of a conservation system, will help to ensure that both production and natural resources protection goals are achieved.

(b) Proposed actions to address soil erosion, manure, and organic by-products and their potential impact on water quality.

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(4) "Specialty pesticide" means a disinfectant, sanitizer, germicide, biocide, or other pesticide labeled solely for use directly on humans or pets, or other pesticides labeled solely for use in areas associated with the household or home life including garden and ornamental uses or on institutional or industrial premises, but excludes pesticides labeled for use on rights-of-way, or other outdoor wide-area treatments.

(5) "State management plan" means a plan for the protection of groundwater as required by the United States environmental protection agency's labeling requirements for pesticides and devices pursuant to 40 CFR part 156.

(6) "Technical assistance" means direct on-site assistance provided to individuals that is designed to achieve MAEAP standards.

(7) "Use" means the loading, mixing, applying, storing, transporting, or disposing of a pesticide or fertilizer.

(8) "Verification" means the on-site evaluation performed by the department in accordance with protocols adopted by the commission of agriculture and rural development to determine if MAEAP standards have been met.

(9) "Water monitoring" means monitoring of water in areas adjacent to properties to determine the concentration and spatial distribution of contaminants.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011.

Popular name: Act 451

Popular name: NREPA

324.8706 Purpose of part.

Sec. 8706. The intent of this part is to reduce risks to the environment and public health and promote economic development by assisting farms in achieving MAEAP standards.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011.

Popular name: Act 451

Popular name: NREPA

324.8707 Conservation practices; on-site evaluations; review and evaluation.

Sec. 8707. (1) The director, in conjunction with Michigan State University Extension and Michigan State University AgBioResearch, and in cooperation with the United States Department of Agriculture Natural Resources Conservation Service, the department of environmental quality, and other professional and industry organizations, shall develop conservation practices for approval by the commission of agriculture and rural development and upon approval shall promote their implementation.

(2) The director, in conjunction with Michigan State University, the department of environmental quality, and other persons the director considers appropriate, shall develop protocols for voluntary on-site evaluations. The on-site evaluations shall be designed to do all of the following:

(a) Provide farmers with the ability to voluntarily determine the relative risk of current practices in relation to sources of contamination.

(b) Provide farmers with the ability to determine the degree to which farm operations are in accord with MAEAP standards and applicable law.

(c) Prioritize operational changes on farms to protect groundwater and surface waters from sources of contamination.

(d) Guide farmers to appropriate technical and educational materials.

(e) Provide farmers with the opportunity for verification.

(f) Provide landowners with the ability to voluntarily assess the value of managing areas of the land that are not utilized for traditional or production agriculture practices for environmental, ecological, and economic benefits.

(3) The director, in conjunction with the council, shall review and evaluate the effectiveness of conservation practices approved under subsection (1).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2000, Act 100, Imd. Eff. May 19, 2000;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2013, Act 46, Imd. Eff. June 6, 2013;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8708 Environmental assurance advisory council.

Sec. 8708. (1) The director shall establish an environmental assurance advisory council composed of all of the following:

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(a) The director of the department of agriculture and rural development.
(b) The director of the department of environmental quality.
(c) The director of the Michigan State University Extension.
(d) The director of the Michigan State University AgBioResearch.
(e) Representatives of all of the following as appointed by the director to serve terms of 3 years:
(*i*) The United States Department of Agriculture - Farm Service Agency.
(*ii*) The United States Department of Agriculture Natural Resources Conservation Service.
(*iii*) Conservation districts.
(*iv*) Farmers and other agricultural organizations.
(*v*) Nongovernmental conservation and environmental organizations.
(*vi*) Regulated agricultural industries.
(*vii*) A private consulting forester.
(*viii*) A member of the forest products industry.
(*ix*) A member of the logging profession.
(*x*) Other persons as determined by the director.
(*xi*) A member representing each regional environmental assurance team established under section 8709.
(2) The council shall be co-chaired by the representative from Michigan State University Extension and a representative from 1 of the farmers and other agricultural organizations.
(3) The council shall advise the director on topics including, but not limited to, the following:
(a) MAEAP standards.
(b) On-site evaluations for verification of specific aspects of a farming operation.
(c) Water quality and environmental monitoring.
(d) Protocols for verification and revocation of verification.
(e) MAEAP activities.
(f) Interagency coordination of conservation programs.
(g) The use of money in the clean water fund created in section 8807 and other funding sources to promote MAEAP and activities to encourage more MAEAP-verified farms.
(h) Options to increase assistance to assist small- and medium-sized farms in achieving MAEAP standards.
(i) The creation of subcommittees as needed to address emerging and ongoing issues.
(j) On-site evaluations of potential environmental, ecological, and economic benefits that can be realized by managing areas of the land that are not utilized for traditional or production agriculture practices.
(4) The council shall do all of the following:
(a) Annually provide recommendations to the director on MAEAP standards and protocols for verification and revocation of verification for consideration by the commission of agriculture and rural development.
(b) Annually submit a report to the department that outlines activities, accomplishments, and emerging issues. The department shall share this report with the agriculture community.
(c) Provide recommendations to the director on the creation of a tiered recognition program for farms working toward MAEAP verification. To qualify for the recognition program, farmers must have completed educational programs, conducted appropriate farm assessments, and implemented conservation practices as approved by the director. The tiers may be used to recognize a farm's movement toward MAEAP verification.
(d) Provide recommendations to the director and the legislature on incentives to increase participation in MAEAP.
(e) Annually provide recommendations to the director on funding for research projects that address impediments to verification and improve MAEAP practice standards.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2013, Act 46, Imd. Eff. June 6, 2013;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Compiler's note: For abolishment of the groundwater advisory council and transfer of its powers and duties to the department of agriculture, see E.R.O. No. 2007-5, compiled at MCL 324.99907.

Popular name: Act 451

Popular name: NREPA

324.8709 Environmental assurance teams.

Sec. 8709. (1) The director may establish regional environmental assurance teams composed of departmental, educational, and technical assistance personnel, and other persons as determined necessary by the director, or the team, or both for implementation of programs developed under this part.
(2) The environmental assurance teams established under subsection (1) are responsible for implementation of programs developed under this part, including, but not limited to, all of the following:
(a) Providing access to educational opportunities including direct educational assistance and consulting

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programs; demonstration projects; educational programs; and tours, workshops, and conferences.

(b) Providing access to technical assistance related to any of the following:

(*i*) On-site evaluation of practices that may impact natural resources.

(*ii*) The development and implementation of conservation plans.

(*iii*) The development and implementation of activity plans for persons making conservation practice changes.

(*iv*) On-site evaluation of potential environmental, ecological, and economic benefits that can be realized by managing areas of the land that are not utilized for traditional or production agriculture practices.

(c) Evaluating, as available, grants to persons implementing activity plans and conservation practices required to achieve MAEAP standards.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2013, Act 46, Imd. Eff. June 6, 2013.

Popular name: Act 451

Popular name: NREPA

324.8710 Michigan agriculture environmental assurance program.

Sec. 8710. (1) The director, in consultation with the council, shall implement a Michigan agriculture environmental assurance program designed to promote natural resources conservation through education, technical assistance, and verification. The MAEAP shall be a voluntary program that is available to farms throughout the state.

(2) A farmer who desires to have his or her farm MAEAP-verified shall do all of the following:

(a) Complete educational requirements authorized by the department.

(b) Develop and implement 1 or more conservation plans as approved by the director.

(c) Upon completion of subdivisions (a) and (b), contact the department to arrange for an on-site evaluation.

(3) If the department conducts an on-site evaluation and determines that a farm is meeting MAEAP standards, the department shall issue a MAEAP verification. A MAEAP verification that is in effect on September 30, 2015 is valid for 5 years from the original issue date. Beginning October 1, 2015, a new MAEAP verification or reverification is valid for 5 years.

(4) A farm is eligible for reverification if the department determines it is meeting MAEAP standards through an on-site evaluation conducted by the department or its designee.

(5) The department shall provide MAEAP verification signs to each MAEAP-verified farm.

(6) A farm that allows its verification to lapse or whose verification is revoked under subsection (7) shall forfeit its verification sign and all other benefits that are provided to MAEAP-verified farms under this act.

(7) The director may revoke verification of a MAEAP-verified farm if any of the following apply:

(a) The department, in consultation with the department of environmental quality, determines with scientific evidence provided by water quality data that the MAEAP-verified farm caused an exceedance of water quality standards as a result of nonconformance with MAEAP standards.

(b) The MAEAP-verified farm fails to conform to MAEAP standards as a result of gross negligence.

(c) The MAEAP-verified farm fails to comply with protocols for verification as approved by the commission of agriculture and rural development.

(d) Upon advice from the interagency technical review panel provided for in subsection (11), the director determines that the MAEAP-verified farm is responsible for a pattern of repeated violations of environmental laws, rules, regulations, permit conditions, settlement agreements, orders of consent, or judicial orders that were due to separate and distinct events.

(8) A farmer is not liable for groundwater contamination on a MAEAP-verified farm for activities on the MAEAP-verified farm unless he or she was grossly negligent or in violation of state or federal law or failed to comply with the MAEAP standards. This part does not modify or limit any obligation, responsibility, or liability imposed by any other provision of state law.

(9) The department shall establish a MAEAP grants program. Grants issued under the MAEAP grants program are limited to availability of funds collected pursuant to this part. Grants shall be available for all of the following:

(a) Technical assistance.

(b) Promotion of the MAEAP.

(c) Educational programs related to the MAEAP.

(d) Demonstration projects to implement conservation practices.

(e) Removal of potential sources of contamination.

(f) Other purposes considered appropriate by the director.

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(10) Following review of the proposed tiered recognition program submitted to the director by the council under section 8708, the director shall approve and implement a tiered recognition program. As part of the tiered recognition program, the department shall provide a certificate of progress to a farm participating in MAEAP recognizing each time a new tier is achieved. The certificate of progress shall summarize conservation practices implemented by the farm and the environmental impacts of the implemented conservation practices. The certificate of progress shall recognize the farm for its achievement and encourage the farm to complete the remaining conservation practices necessary for verification. A certificate of progress is valid for 5 years from the date of mailing. Upon written confirmation by the farmer and the MAEAP technician updating any new conservation practices and confirming that all previous applicable conservation practices are still being implemented, the department shall reissue a certificate of progress for additional 5-year periods, as appropriate, until the farm becomes MAEAP-verified in the applicable system or the farmer ceases implementation of the conservation practices. Information collected under this section is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(11) The department and the department of environmental quality shall enter into a memorandum of understanding to formalize a commitment to promote the MAEAP and to clarify the application of state and federal environmental laws to farms. In addition, the memorandum of understanding shall provide for all of the following:

(a) An ongoing interagency technical review panel for MAEAP-verified farms that discharge in violation of state or federal law to determine enforcement action.

(b) Preference for funding for nonpoint source pollution – funds for farms seeking MAEAP verification.

(c) Considerations for reverification of a farm with revoked MAEAP verification status.

(d) Integration of the MAEAP into pollution prevention activities of both agencies.

(e) Clarification of the consultation process in part 88 to ensure that the department of agriculture and rural development has meaningful input into the establishment of the grants program and the issuance of grants.

(12) Beginning December 1, 2016 and every December 1 thereafter, the department shall publish a report on MAEAP that includes, but is not limited to, all of the following:

(a) County and statewide totals for the previous fiscal year of all of the following:

(*i*) Conservation practices implemented.

(*ii*) Environmental impacts of practices implemented.

(*iii*) Number of new verifications and reverifications.

(*iv*) Number of unique farms verified.

(*v*) Number of farms in tiered recognition system.

(*vi*) Total area and percentage of this state's farmland involved.

(b) County and statewide program to-date totals of all of the following:

(*i*) Conservation practices implemented.

(*ii*) Environmental impacts of practices implemented.

(*iii*) Number of new verifications and reverifications.

(*iv*) Number of unique farms verified.

(*v*) Number of farms in tiered recognition system.

(*vi*) Total area and percentage of this state's farmland involved.

(c) A summary of educational and MAEAP verification standards changes for each system tool and an overview of the reasons for the changes.

(d) A summary of each system subcommittee's work beyond the standards changes, including identification of ongoing and emerging issues.

(13) The department shall make available a consent form for completion by farmers implementing conservation practices that includes both of the following:

(a) Permission for the department to associate the farmer's name, farm location, and mailing address with conservation practices implemented on that farm.

(b) A statement by the farmer that conservation practices being implemented on the farm are for the purpose of working toward MAEAP verification.

(14) The department shall provide for the consent forms described in subsection (13) to be authenticated. The department may use a completed consent form in the recognition program described in subsection (10). Information collected under this subsection is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

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324.8711 Designation of pesticide as restricted use; establishment of groundwater resource protection levels.

Sec. 8711. (1) Pesticides containing ingredients that have been confirmed in groundwater at a level above their groundwater resource response level or pesticides for which a state management plan is required shall be registered as restricted use pesticides pursuant to part 83. The director, by rule promulgated pursuant to part 83, shall establish criteria for designating a pesticide a restricted use pesticide due to groundwater concerns.

(2) The director of the department of public health shall establish groundwater resource protection levels and promulgate groundwater resource protection levels for all pesticides that do not have a federally established maximum contaminant level or a health advisory level and for which monitoring occurs.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8712 Program to track restricted use pesticides to county of application; additional information required; confidentiality.

Sec. 8712. (1) The director shall establish and implement a program to track restricted use pesticides to their county of application.

(2) The director may require additional information for more refined tracking in specific areas determined through groundwater impact potential estimation to be highly vulnerable to groundwater contamination for those pesticides in which the United States environmental protection agency has required a state management plan.

(3) Information collected in subsection (2) is confidential business information and is not subject to the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8713 Water quality monitoring program.

Sec. 8713. (1) The director, in conjunction with the department of environmental quality and the department of community health, shall develop and establish priorities, procedures, and protocols for the implementation of a water quality monitoring program to do all of the following:

(a) Provide general screening of groundwater or surface water, or both.

(b) Determine the relative risk of groundwater contamination at different locations.

(c) Perform envelope monitoring.

(2) The director shall, in a timely manner, notify affected well owners of their monitoring results from the monitoring conducted pursuant to this section, including the method detection limits and associated water resource protection levels.

(3) The monitoring program conducted pursuant to this section may provide for modifications of sampling density and analytes to reflect regional groundwater impact potential.

(4) The monitoring conducted pursuant to this section shall be conducted utilizing generally accepted scientific practices.

(5) The department shall establish a method detection limit goal for monitoring conducted pursuant to this section set at 10% of a compound's groundwater resource response level.

(6) Agencies conducting monitoring for pesticides or fertilizers pursuant to this section shall notify the director, on forms provided by or in a format approved by the director, of the location, procedure, and concentration of all pesticide detections or nitrate concentrations in excess of 10 parts per million. Information received by the director shall be evaluated based upon accepted protocols and procedures established under this part.

(7) The director shall establish by rule laboratory confirmation mechanisms used under this part.

(8) The director shall establish by rule risk assessment protocols for the development of groundwater resource protection levels.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011.

Popular name: Act 451

Popular name: NREPA

324.8713a Surface water quality monitoring program.

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Sec. 8713a. (1) The director, in consultation with the council, may develop and establish priorities, procedures, and protocols for the implementation of a surface water quality monitoring program to do both of the following:

(a) Promote voluntary water quality monitoring by farms.

(b) Monitor and benchmark the effectiveness of conservation practices and MAEAP standards in cooperation with participating farmers.

(2) Water quality information collected under this section by the department in cooperation with farmers shall be aggregated and made available to the commission of agriculture and rural development. Specific locations or persons involved in water quality information collection are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: Add. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8714 Confirmation of adverse impact on groundwater; powers and authority of director.

Sec. 8714. (1) Upon confirmation of an adverse impact on groundwater, the director may, upon reasonable notice, require a person to furnish any information that the person may have relating to the identification, nature, and quantity of pesticides and fertilizers that are or have been used on a particular site and to current or past production practices that may have impacted groundwater quality. This information shall be treated as confidential business information and is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(2) The director may, upon written request, authorize persons to land-apply materials contaminated with pesticides or fertilizers at agronomic rates. This authorization shall prescribe appropriate operational control activities to protect the application location and shall identify both the location of remediation and the location or locations where such a land application will take place.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011.

Popular name: Act 451

Popular name: NREPA

***** *324.8715 THIS SECTION IS REPEALED BY ACT 118 OF 2015 EFFECTIVE DECEMBER 31, 2021* *****

324.8715 Fees; repeal of section.

Sec. 8715. (1) In addition to the fees provided for in part 83, a registrant shall pay an annual water quality protection fee for each product to be registered. The water quality protection fee is $270.00 per product. The water quality protection fee is due in the office of the director before July 1.

(2) An additional late fee of $100.00 shall be paid by the registrant for each pesticide if the pesticide registration is a renewal registration and the water quality protection fee is received by the department after June 30.

(3) A person required to pay a specialty fertilizer or soil conditioner registration fee under section 8505 shall pay an additional $100.00 water quality protection fee for each brand and product name of each grade registered.

(4) All fertilizer manufacturers or distributors licensed under part 85, except specialty fertilizer and soil conditioner registrants, shall pay the following:

(a) Until December 31, 2015, a water quality protection fee of 1-1/2 cents per percent of nitrogen in the fertilizer for each ton of fertilizer sold.

(b) Beginning January 1, 2016, $.0005 per pound of fertilizer sold.

(5) The fees collected under this part, including any interest or dividends earned, shall be transmitted to the state treasurer, who shall credit the money received to the fund.

(6) Upon the expenditure or appropriation of money raised in this section for any purpose other than those specifically listed in this part, authorization to collect fees in this section shall be suspended until the money expended or appropriated for purposes other than those listed in this part are returned to the fund.

(7) The department may audit, or may contract for audits of records that are the basis for fees levied under this section.

(8) This section is repealed December 31, 2021.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995;—Am. 2000, Act 100, Imd. Eff. May 19, 2000;—Am. 2008, Act 18, Imd. Eff. Feb. 29, 2008;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

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Popular name: Act 451

Popular name: NREPA

324.8716 Freshwater protection fund.

Sec. 8716. (1) The freshwater protection fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund, including general fund general purpose appropriations, gifts, grants, and bequests. The director shall annually seek matching general fund general purpose appropriations in amounts equal to the water quality protection fees collected under section 8715 that are deposited into the fund pursuant to this part. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall be the administrator of the fund for auditing purposes.

(5) The department shall expend money from the fund, upon appropriation, only for 1 or more of the following purposes:

(a) Direct assistance.

(b) Indirect assistance.

(c) Emergency response and removal of potential sources of water contamination. Expenditures pursuant to this subdivision shall not exceed $15,000.00 per location.

(d) Natural resources protection.

(e) Administrative costs. Expenditures pursuant to this subdivision shall not exceed 20% of the annual appropriations from the fund.

(6) The department shall establish criteria and procedures for approving proposed expenditures from the fund.

(7) Notwithstanding section 8715, if at the close of any fiscal year the amount of money in the fund exceeds $5,000,000.00, the department shall not collect water quality protection fees for the following year. After the water quality protection fees have been suspended under this subsection, the fees shall only be reinstated if, at the close of any succeeding fiscal year, the amount of money in the fund is less than $2,000,000.00.

(8) The department of treasury shall, before November 1 of each year, notify the department of the balance in the fund at the close of the preceding fiscal year.

(9) As used in this section:

(a) "Administrative costs" includes, but is not limited to, costs incurred during any of the following:

(*i*) Groundwater monitoring for pesticides and fertilizers.

(*ii*) Development and enforcement of natural resources protection rules.

(*iii*) Coordination of programs under this part with the United States Environmental Protection Agency and other state programs with environmental protection responsibilities.

(*iv*) Coordination of programs under this part with the United States Department of Agriculture Natural Resources Conservation Service and state programs with nonpoint source pollution prevention and conservation practice responsibilities.

(*v*) Management of pesticide sales information.

(b) "Direct assistance" includes, but is not limited to, programs that will provide for any of the following:

(*i*) Provision of alternate noncommunity water supplies.

(*ii*) Closure of wells that may impact groundwater, such as abandoned, improperly constructed, or drainage wells.

(*iii*) The environmentally sound disposal or recycling of specialty pesticide containers.

(*iv*) The environmentally sound disposal or recycling of nonspecialty pesticide containers.

(*v*) Specialty and nonspecialty pesticide disposal programs.

(*vi*) Programs devoted to integrated natural resources conservation that encourage the judicious use of pesticides and fertilizers and other agricultural inputs and practices that are protective of water quality through targeted systems approach to management decisions.

(*vii*) Incentive and cost share programs to assist farmers in achieving MAEAP standards.

(*viii*) Incentive and cost share programs for MAEAP-verified farms with potential sources of contamination on their property.

(*ix*) Monitoring of private well water for pesticides, fertilizers, and other contaminants.

(*x*) Removal of soils and waters contaminated by pesticides and fertilizers and the land application of those materials at agronomic rates.

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(*xi*) MAEAP grants pursuant to section 8710.

(*xii*) Programs that enhance investment of private and federal funds in conservation.

(*xiii*) Verification.

(*xiv*) Other programs established pursuant to this part.

(c) "Indirect assistance" includes, but is not limited to, programs that will provide for any of the following:

(*i*) Public education and demonstration programs on specialty pesticide container recycling and environmentally sound disposal methods.

(*ii*) Educational programs.

(*iii*) Technical assistance programs.

(*iv*) The promotion and implementation of on-site evaluation systems, conservation practices, and the MAEAP.

(*v*) Research programs.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2003, Act 163, Imd. Eff. Aug. 12, 2003;—Am. 2007, Act 174, Imd. Eff. Dec. 21, 2007;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8717 Rules.

Sec. 8717. The department may promulgate rules as it considers necessary or advisable to implement this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

PART 88
WATER POLLUTION AND ENVIRONMENTAL PROTECTION ACT

324.8801 Definitions.

Sec. 8801. As used in this part:

(a) "Department" means the department of environmental quality.

(b) "Director" means the director of the department.

(c) "Fund" means the clean water fund created in section 8807.

(d) "Grant" means a nonpoint source pollution prevention and control grant or a wellhead protection grant under this part.

(e) "Local unit of government" means a county, city, village, or township, or an agency of a county, city, village, or township; the office of a county drain commissioner; a soil conservation district established under part 93; a watershed council; a local health department as defined in section 1105 of the public health code, 1978 PA 368, MCL 333.1105; or an authority or any other public body created by or pursuant to state law.

(f) "MAEAP" means the Michigan agriculture environmental assurance program as that term is defined in part 87.

(g) "MAEAP-verified farm" means that term as it is defined in part 87.

(h) "Nonpoint source pollution" means water pollution from diffuse sources, including runoff from precipitation or snowmelt contaminated through contact with pollutants in the soil or on other surfaces and either infiltrating into the groundwater or being discharged to surface waters, or runoff or wind causing erosion of soil into surface waters.

History: Add. 1998, Act 287, Eff. Dec. 1, 1998;—Am. 2011, Act 1, Imd. Eff. Mar. 9, 2011.

Popular name: Act 451

Popular name: NREPA

324.8802 Nonpoint source pollution prevention and control grants; wellhead protection grants.

Sec. 8802. (1) The department, in consultation with the department of agriculture and rural development, shall establish a grants program to provide grants for nonpoint source pollution prevention and control projects and wellhead protection projects. The grants program shall provide grants to local units of government or entities that are exempt from taxation under section 501(c)(3) of the internal revenue code.

(2) The nonpoint source pollution prevention and control grants issued under this part shall be provided for projects that do 1 or more of the following:

(a) Implement the physical improvement portion of watershed plans that are approved by the department.

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(b) Reduce specific nonpoint source pollution as identified by the department.

(c) Promote MAEAP verification.

(3) The wellhead protection grants issued under this part shall be provided for projects that are consistent with a wellhead protection plan approved by the department and that do any of the following:

(a) Plug abandoned wells.

(b) Provide for the purchase of land or the purchase of rights in land to protect aquifer recharge areas.

(c) Implement the physical improvement portion of the wellhead protection plan.

(4) For any grant issued under this part, a local unit of government shall contribute at least 25% of the project's total cost from other public or private funding sources. The department may approve in-kind services to meet all or a portion of the match requirement under this subsection. In addition, the department may accept as the match requirement under this subsection a contract between the grant applicant and the department that provides for maintenance of the project or practices that are funded under terms acceptable to the department. The contract shall require maintenance of the project or practices throughout the period of time in which the state is paying off the bonds that were issued pursuant to the clean Michigan initiative act to implement this part.

(5) In issuing grants under this section, the department, in consultation with the department of agriculture and rural development, shall select projects that, to the extent practicable, provide maximum benefit to the state in protecting public health and the environment and contributing to economic development.

History: Add. 1998, Act 287, Eff. Dec. 1, 1998;—Am. 2011, Act 1, Imd. Eff. Mar. 9, 2011.

Popular name: Act 451

Popular name: NREPA

324.8803 Grant awards; criteria for project selection.

Sec. 8803. In selecting projects for a grant award, the department shall consider the following as they relate to a project:

(a) The expectation for long-term water quality improvement.

(b) The expectation for long-term protection of high quality waters.

(c) The consistency of the project with remedial action plans and other regional water quality or watershed management plans approved by the department.

(d) The placement of the watershed on the list of impaired waters pursuant to section 303(d) of title III of the federal water pollution control act, chapter 758, 86 Stat. 846, 33 U.S.C. 1313.

(e) Commitments for financial and technical assistance from the partners in the project.

(f) Financial and other resource contributions, including in-kind services, by project participants in excess of that required in section 8802(4).

(g) The length of time the applicant has committed to maintain the physical improvements.

(h) The commitment to provide monitoring to document improvement in water quality or the reduction of pollutant loads.

(i) Whether the project provides benefits to sources of drinking water.

(j) Other information the department considers relevant.

History: Add. 1998, Act 287, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.8804 Grant applications.

Sec. 8804. A local unit of government that wishes to apply for a grant shall submit a written grant application to the department in a manner prescribed by the department and containing the information required by the department. The grant application shall also include all of the following:

(a) A detailed description of the project for which the grant is sought.

(b) An explanation of how the project is consistent with an approved watershed plan, if applicable.

(c) A description of the total cost of the project and the source of the local government's contribution to the project.

History: Add. 1998, Act 287, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.8805 Issuance of grants.

Sec. 8805. Upon receipt of a grant application pursuant to section 8804, the department, in consultation with the department of agriculture and rural development, shall consider the projects proposed to be funded

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and the extent that money is available for grants under this part, and shall issue grants for projects that the department determines will assist in the prevention or control of pollution from nonpoint sources or will provide for wellhead protection.

History: Add. 1998, Act 287, Eff. Dec. 1, 1998;—Am. 2011, Act 1, Imd. Eff. Mar. 9, 2011.

Popular name: Act 451

Popular name: NREPA

324.8806 Administration of part.

Sec. 8806. Grants made under this part are subject to the applicable requirements of part 196. The department, in consultation with the department of agriculture and rural development, shall administer this part in compliance with the applicable requirements of part 196, including the reporting requirements to the legislature of the grants provided under this part.

History: Add. 1998, Act 287, Eff. Dec. 1, 1998;—Am. 2011, Act 1, Imd. Eff. Mar. 9, 2011.

Popular name: Act 451

Popular name: NREPA

324.8807 Clean water fund.

Sec. 8807. (1) The clean water fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) Except as otherwise provided in this section, the department, in consultation with the department of agriculture and rural development, shall expend money in the fund, upon appropriation, for any of the following:

(a) To implement the programs described in the department's document entitled "A Strategic Environmental Quality Monitoring Program for Michigan's Surface Waters", dated January 1997. In implementing these programs, the department may contract with any person.

(b) Not more than $100,000.00 of the total annual appropriations from the fund to monitor and benchmark the effectiveness of conservation practices and MAEAP standards in cooperation with participating farmers.

(c) Promotion of MAEAP and activities to encourage more MAEAP-verified farms.

(d) Water pollution control activities.

(e) Wellhead protection activities.

(f) Storm water treatment projects and activities.

(5) Money in the fund shall not be expended for combined sewer overflow corrections.

(6) Money in the fund shall not be expended until rules are promulgated under section 8808.

History: Add. 1998, Act 287, Eff. Dec. 1, 1998;—Am. 2011, Act 1, Imd. Eff. Mar. 9, 2011;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8808 Rules.

Sec. 8808. The department shall promulgate rules to implement this part including rules to establish a grant program or loan program, or both, for expenditure of money in the fund.

History: Add. 1998, Act 287, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 324.8801 et seq. and R 324.8901 et seq. of the Michigan Administrative Code.

PART 89
LITTERING

324.8901 Definitions.

Sec. 8901. As used in this part:

(a) "Litter" means any of the following:

(*i*) Rubbish, refuse, waste material, garbage, offal, paper, glass, cans, bottles, trash, debris, or other foreign substances.

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(*ii*) A vehicle that is considered abandoned under section 252a of the Michigan vehicle code, 1949 PA 300, MCL 257.252a.

(*iii*) An abandoned vessel as defined in section 80130f.

(*iv*) An ORV that is considered abandoned under section 80130f as made applicable in section 81151.

(*v*) A snowmobile that is considered abandoned under section 80130f as made applicable in section 82161.

(b) "Public or private property or water" includes, but is not limited to, any of the following:

(*i*) The right-of-way of a road or highway, a body of water or watercourse, or the shore or beach of a body of water or watercourse, including the ice above the water.

(*ii*) A park, playground, building, refuge, or conservation or recreation area.

(*iii*) Residential or farm properties or timberlands.

(c) "Vehicle" means a motor vehicle registered or required to be registered under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(d) "Vessel" means a vessel registered under part 801.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 494, Imd. Eff. Dec. 29, 2004;—Am. 2014, Act 549, Eff. Apr. 16, 2015.

Popular name: Act 451

Popular name: Littering

Popular name: NREPA

324.8902 Littering property or water prohibited; removal of injurious substances dropped on highway as result of accident.

Sec. 8902. (1) A person shall not knowingly, without the consent of the public authority having supervision of public property or the owner of private property, dump, deposit, place, throw, or leave, or cause or permit the dumping, depositing, placing, throwing, or leaving of, litter on public or private property or water other than property designated and set aside for such purposes.

(2) A person who removes a vehicle that is wrecked or damaged in an accident on a highway, road, or street shall remove all glass and other injurious substances dropped on the highway, road, or street as a result of the accident.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Littering

Popular name: NREPA

324.8903 Causing litter or object to fall or be thrown into path of or to hit vehicle; violation as misdemeanor; penalty.

Sec. 8903. (1) A person shall not knowingly cause litter or any object to fall or to be thrown into the path of or to hit a vehicle traveling upon a highway.

(2) A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or a fine of not more than $500.00, or both.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Littering

Popular name: NREPA

324.8904 Presumptions.

Sec. 8904. (1) Except as provided in subsection (3) involving litter from a leased vehicle or leased vessel, in a proceeding for a violation of this part involving litter from a motor vehicle or vessel, proof that the particular vehicle or vessel described in the citation, complaint, or warrant was used in the violation, together with proof that the defendant named in the citation, complaint, or warrant was the registered owner of the vehicle or vessel at the time of the violation, gives rise to a rebuttable presumption that the registered owner of the vehicle or vessel was the driver of the vehicle or vessel at the time of the violation.

(2) There is a rebuttable presumption that the driver of a vehicle or vessel is responsible for litter that is thrown, dumped, deposited, placed, or left from the vehicle or vessel on public or private property or water.

(3) In a proceeding for a violation of this part involving litter from a leased motor vehicle or leased vessel, proof that the particular vehicle or vessel described in the citation, complaint, or warrant was used in the violation, together with proof that the defendant named in the citation, complaint, or warrant was the lessee of the vehicle or vessel at the time of the violation, gives rise to a rebuttable presumption that the lessee of the vehicle or vessel was the driver of the vehicle or vessel at the time of the violation.

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(4) In a proceeding for a violation of this part involving litter consisting of an abandoned vehicle, proof that the particular vehicle described in the citation, complaint, or warrant was abandoned, and that the defendant named in the citation, complaint, or warrant was the titled owner or lessee of the vehicle at the time it was abandoned, gives rise to a rebuttable presumption that the defendant abandoned the vehicle.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 111, Imd. Eff. June 28, 1995;—Am. 1998, Act 15, Imd. Eff. Mar. 9, 1998;—Am. 2004, Act 494, Imd. Eff. Dec. 29, 2004.

Popular name: Act 451

Popular name: Littering

Popular name: NREPA

324.8905 Violation involving litter produced at health facility, agency, or laboratory as misdemeanor; violation involving infectious waste, pathological waste, or sharps as felony; penalty; second or subsequent violation under subsection (2); definitions.

Sec. 8905. (1) A person who violates this part where the violation involves litter that is produced at a health facility or agency as defined in section 20106 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.20106 of the Michigan Compiled Laws, or at a laboratory described in section 20507 of Act No. 368 of the Public Acts of 1978, being section 333.20507 of the Michigan Compiled Laws, is guilty of a misdemeanor, punishable by imprisonment for not more than 6 months or a fine of not more than $1,000.00, or both.

(2) Except as provided in subsection (3), a person who violates this part where the violation involves litter that is infectious waste, pathological waste, or sharps is guilty of a felony punishable by imprisonment for not more than 2 years or by a fine of not more than $5,000.00, or both.

(3) For a second or subsequent violation under subsection (2), the person shall be punished by imprisonment for not less than 1 year or more than 5 years and a fine of not more than $10,000.00.

(4) As used in this section:

(a) "Infectious waste" means waste that contains varying amounts of microorganisms that have a potential for causing serious illness.

(b) "Pathological waste" means body organs, tissues, parts, and fluids removed during surgery or autopsy, whether or not they are infectious.

(c) "Sharps" means discarded hypodermic needles, syringes and scalpel blades, whether or not they are infectious.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Littering

Popular name: NREPA

324.8905a Violation as state civil infraction; civil fine; default remedies; exception.

Sec. 8905a. (1) A person who violates this part, if the amount of the litter is less than 1 cubic foot in volume, is responsible for a state civil infraction and is subject to a civil fine of not more than $800.00.

(2) A person who violates this part, if the amount of the litter is 1 cubic foot or more but less than 3 cubic feet in volume, is responsible for a state civil infraction and is subject to a civil fine of not more than $1,500.00.

(3) Except as provided in subsection (4), a person who violates this part, if the amount of the litter is 3 cubic feet or more in volume, is responsible for a state civil infraction and is subject to a civil fine of not more than $2,500.00. A person found to have committed a violation described in this subsection in a subsequent proceeding is subject to a civil fine of not more than $5,000.00.

(4) A person who violates this part, if the litter is described in section 8901(a)(*ii*) to (*v*), is responsible for a state civil infraction and is subject to a civil fine of not less than $500.00 or more than $2,500.00. A person found to have committed a violation described in this subsection in a subsequent proceeding is subject to a civil fine of not less than $1,000.00 or more than $5,000.00. However, the court shall not order the payment of a fine unless the vehicle has been disposed of under section 252g of the Michigan vehicle code, 1949 PA 300, MCL 257.252g, the abandoned vessel has been disposed of under section 80130k, the ORV that is considered abandoned has been disposed of under section 80130k as made applicable in section 81151, or the snowmobile that is considered abandoned has been disposed of under section 80130k as made applicable in section 82161.

(5) A default in the payment of a civil fine or costs ordered under this part or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, 1961 PA 236, MCL

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600.101 to 600.9947.

(6) This section does not apply to a violation of section 8903 or 8905.

History: Add. 1998, Act 15, Imd. Eff. Mar. 9, 1998;—Am. 2004, Act 494, Imd. Eff. Dec. 29, 2004;—Am. 2014, Act 549, Eff. Apr. 16, 2015.

Compiler's note: Former MCL 324.8905a, which pertained to violations as civil infractions, was repealed by Act 111 of 1995, Eff. Dec. 31, 1997.

Popular name: Act 451

Popular name: Littering

Popular name: NREPA

324.8905b Additional penalties or sanctions; community service.

Sec. 8905b. (1) In addition to any other penalty or sanction provided in this part for a criminal or civil action brought under this part, the court may require the defendant to pay either or both of the following:

(a) The cost of removing all litter which is the subject of the violation and the cost of damages to any land, water, wildlife, vegetation, or other natural resource or to any facility damaged by the violation of this part. Money collected under this subdivision shall be distributed to the governmental entity bringing the enforcement action.

(b) The reasonable expense of impoundment under section 8905c. Money collected under this subdivision shall be distributed to the governmental entity that impounded the vehicle involved in the violation of this part.

(2) In addition to any other penalty or sanction provided for in this part, the court shall impose, under the supervision of the court, community service in the form of litter gathering labor, including, but not limited to, litter connected with the particular violation.

History: Add. 1998, Act 15, Imd. Eff. Mar. 9, 1998.

Compiler's note: Former MCL 324.8905b, which pertained to payment of additional costs and expenses, was repealed by Act 111 of 1995, Eff. Dec. 31, 1997.

Popular name: Act 451

Popular name: Littering

Popular name: NREPA

324.8905c Impoundment of vehicles; lien; forfeiture of bond; foreclosure sale; notice; distribution of proceeds.

Sec. 8905c. (1) A peace officer may seize and impound a vehicle operated in the commission of a violation of this part if the operator of the vehicle has previously been convicted for a violation of this part. Upon impoundment, the vehicle is subject to a lien, subordinate to a prior lien of record, in the amount of any fine, costs, and damages that the defendant may be ordered to pay under this part. The defendant or a person with an ownership interest in the vehicle may post with the court a cash or surety bond in the amount of $750.00. If such a bond is posted, the vehicle shall be released from impoundment. The vehicle shall also be released, and the lien shall be discharged, upon a judicial determination that the defendant is not responsible for the violation of this part or upon payment of the fine, costs, and damages. Additionally, if the defendant is determined to be not responsible for the violation of this part, the court shall assess against the governmental entity bringing the action costs, payable to the defendant, for any damages that the defendant has sustained due to the impoundment of the vehicle.

(2) If the court determines that the defendant is responsible for the violation of this part and the defendant defaults in the payment of any fine, costs, or damages, or any installment, as ordered pursuant to this part, any bond posted under subsection (1) shall be forfeited and applied to the fine, costs, damages, or installment. The court shall certify any remaining unpaid amount to the attorney for the governmental entity bringing the action. The attorney for the governmental entity may enforce the lien by a foreclosure sale. The foreclosure sale shall be conducted in the manner provided and subject to the same rights as apply in the case of execution sales under sections 6031, 6032, 6041, 6042, and 6044 to 6047 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6031, 600.6032, 600.6041, 600.6042, and 600.6044 to 600.6047.

(3) Not less than 21 days before the foreclosure sale under subsection (2), the attorney for the governmental entity bringing the action shall by certified mail send written notice of the time and place of the foreclosure sale to each person with a known ownership interest in or lien of record on the vehicle. In addition, not less than 10 days before the foreclosure sale, the attorney shall twice publish notice of the time and place of the foreclosure sale in a newspaper of general circulation in the county in which the vehicle was seized. The proceeds of the foreclosure sale shall be distributed in the following order of priority:

(a) To discharge any lien on the vehicle that was recorded prior to the creation of the lien under subsection

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(1).

(b) To the clerk of the court for the payment of the fine, costs, and damages, that the defendant was ordered to pay.

(c) To discharge any lien on the vehicle that was recorded after the creation of the lien under subsection (1).

(d) To the owner of the vehicle.

History: Add. 1998, Act 15, Imd. Eff. Mar. 9, 1998.

Compiler's note: Former MCL 324.8905c, which pertained to seizure and impoundment of vehicle, was repealed by Act 111 of 1995, Eff. Dec. 31, 1997.

Popular name: Act 451

Popular name: Littering

Popular name: NREPA

324.8906 Posting notices; publication; receptacles for litter.

Sec. 8906. All public authorities having supervision of public property of this state or any political subdivision of this state may post notice signs and otherwise publicize the requirements of this part. All public authorities having supervision of public property in this state may establish and maintain receptacles for the deposit of litter on the property and publicize the location of those receptacles.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Littering

Popular name: NREPA

324.8907 Powers of municipalities not limited.

Sec. 8907. This part does not affect or in any way limit the powers of municipalities to enact and enforce ordinances for the control and elimination of litter.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Littering

Popular name: NREPA

SOIL CONSERVATION, EROSION, AND SEDIMENTATION CONTROL

PART 91
SOIL EROSION AND SEDIMENTATION CONTROL

324.9101 Definitions; A to W.

Sec. 9101. (1) "Agricultural practices" means all land farming operations except the plowing or tilling of land for the purpose of crop production or the harvesting of crops.

(2) "Authorized public agency" means a state agency or an agency of a local unit of government authorized under section 9110 to implement soil erosion and sedimentation control procedures with regard to earth changes undertaken by it.

(3) "Conservation district" means a conservation district authorized under part 93.

(4) "Consultant" means either of the following:

(a) An individual who has a current certificate of training under section 9123.

(b) A person who employs 1 or more individuals who have current certificates of training under section 9123.

(5) "County agency" means an officer, board, commission, department, or other entity of county government.

(6) "County enforcing agency" means a county agency or a conservation district designated by a county board of commissioners under section 9105.

(7) "County program" or "county's program" means a soil erosion and sedimentation control program established under section 9105.

(8) "Department" means the department of environmental quality.

(9) "Earth change" means a human-made change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. Earth change does not include the practice of plowing and tilling soil for the purpose of crop production.

(10) "Gardening" means activities necessary to the growing of plants for personal use, consumption, or

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enjoyment.

(11) "Local ordinance" means an ordinance enacted by a local unit of government under this part providing for soil erosion and sedimentation control.

(12) "Municipal enforcing agency" means an agency designated by a municipality under section 9106 to enforce a local ordinance.

(13) "Municipality" means any of the following:

(a) A city.

(b) A village.

(c) A charter township.

(d) A general law township that is located in a county with a population of 200,000 or more.

(14) "Rules" means the rules promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(15) "Seawall maintenance" means an earth change activity landward of the seawall.

(16) "Sediment" means solid particulate matter, including both mineral and organic matter, that is in suspension in water, is being transported, or has been removed from its site of origin by the actions of wind, water, or gravity and has been deposited elsewhere.

(17) "Soil erosion" means the wearing away of land by the action of wind, water, gravity, or a combination of wind, water, or gravity.

(18) "State agency" means a principal state department or a state public university.

(19) "Violation of this part" or "violates this part" means a violation of this part, the rules promulgated under this part, a permit issued under this part, or a local ordinance enacted under this part.

(20) "Waters of the state" means the Great Lakes and their connecting waters, inland lakes and streams as defined in rules promulgated under this part, and wetlands regulated under part 303.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001;—Am. 2001, Act 227, Imd. Eff. Jan. 2, 2002;—Am. 2005, Act 55, Imd. Eff. June 30, 2005.

Popular name: Act 451

Popular name: NREPA

324.9102, 324.9103 Repealed. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Compiler's note: The repealed sections pertained to definitions and soil erosion and sedimentation control program.

Popular name: Act 451

Popular name: NREPA

324.9104 Rules; availability of information.

Sec. 9104. (1) The department, with the assistance of the department of agriculture, shall promulgate rules for a unified soil erosion and sedimentation control program, including provisions for the review and approval of site plans, land use plans, or permits relating to soil erosion control and sedimentation control. The department shall notify and make copies of proposed rules available to county enforcing agencies, municipal enforcing agencies, and authorized public agencies for review and comment before promulgation.

(2) The department shall make available to county enforcing agencies, municipal enforcing agencies, and authorized public agencies educational information on soil erosion and sedimentation control techniques and the benefits of implementing soil erosion and sedimentation control measures. County enforcing agencies and municipal enforcing agencies shall distribute this information to persons receiving permits under a county program or a local ordinance and to other interested persons.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 323.1701 et seq. of the Michigan Administrative Code.

324.9105 Administration and enforcement of rules; resolution; ordinance; interlocal agreement; review; notice of results; informal meeting; probation; consultant; inspection fees; rescission of order, stipulation, or probation.

Sec. 9105. (1) Subject to subsection (6), a county is responsible for the administration and enforcement of this part and the rules promulgated under this part throughout the county except as follows:

(a) Within a municipality that has assumed the responsibility for soil erosion and sedimentation control under section 9106.

(b) With regard to earth changes of authorized public agencies.

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(2) Subject to subsection (3), the county board of commissioners of each county, by resolution, shall designate a county agency, or a conservation district upon the concurrence of the conservation district, as the county enforcing agency responsible for administration and enforcement of this part and the rules promulgated under this part in the name of the county. The resolution may set forth a schedule of fees for inspections, plan reviews, and permits and may set forth other matters relating to the administration and enforcement of the county program and this part and the rules promulgated under this part.

(3) In lieu of or in addition to a resolution provided for in subsection (2), the county board of commissioners of a county may provide by ordinance for soil erosion and sedimentation control in the county. An ordinance adopted under this subsection may be more restrictive than, but shall not make lawful that which is unlawful under, this part and the rules promulgated under this part. If an ordinance adopted under this subsection is more restrictive than this part and the rules promulgated under this part, the county enforcing agency shall notify a person receiving a permit under the ordinance that the ordinance is more restrictive than this part and the rules promulgated under this part. The ordinance shall incorporate by reference the rules promulgated under this part that do not conflict with a more restrictive ordinance and may set forth such other matters as the county board of commissioners considers necessary or desirable. The ordinance may provide penalties for a violation of the ordinance that are consistent with section 9121.

(4) A copy of a resolution or ordinance adopted under this section and all subsequent amendments to the resolution or ordinance shall be forwarded to the department for the department's review and approval. The department shall forward a copy to the conservation district for that county for review and comment.

(5) Two or more counties may provide for joint enforcement and administration of this part and the rules promulgated under this part by entering into an interlocal agreement pursuant to the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512.

(6) The department shall conduct a review of a county's program every 5 years. The review shall be conducted at least 6 months before the expiration of each succeeding 5-year period. The department shall approve a county's program if all of the following conditions are met:

(a) The county has passed a resolution or enacted an ordinance as provided in this section.

(b) The individuals with decision-making authority who are responsible for administering the county program have current certificates of training under section 9123.

(c) The county has effectively administered and enforced the county program in the past 5 years or has implemented changes in its administration or enforcement procedures that the department determines will result in the county effectively administering and enforcing the county program. In determining whether the county has met the requirement of this subdivision, the department shall consider all of the following:

(*i*) Whether a mechanism is in place to provide funding to administer the county's program.

(*ii*) Whether the county has conducted adequate inspections to assure minimization of soil erosion and off-site sedimentation.

(*iii*) The effectiveness of the county's past compliance and enforcement efforts.

(*iv*) The adequacy and effectiveness of the applications and soil erosion and sedimentation control plans being accepted by the county.

(*v*) The adequacy and effectiveness of the permits issued by the county and the inspections being performed by the county.

(*vi*) The conditions at construction sites under the jurisdiction of the county as documented by departmental inspections.

(7) Following a review under subsection (6), the department shall notify the county of the results of its review and whether the department proposes to approve or disapprove the county's program. Within 30 days of receipt of the notice under this subsection, a county may request and the department shall hold an informal meeting to discuss the review and the proposed action by the department.

(8) Following the meeting under subsection (7), if requested, and consideration of the review under subsection (6), if the department does not approve a county's program, the department shall enter an order, stipulation, or consent agreement under section 9112(7) placing the county on probation. In addition, at any time that the department determines that a county that was previously approved by the department under subsection (6) is not satisfactorily administering and enforcing the county's program, the department shall enter into an order, stipulation, or consent agreement under section 9112(7) placing the county on probation. During the 6-month period after a county is placed on probation, the department shall consult with the county on how the county could change its administration of the county program in a manner that would result in its approval.

(9) Within 6 months after a county has been placed on probation under subsection (8), the county may notify the department that it intends to hire a consultant to administer the county's program. If, within 60 days after notifying the department, the county hires a consultant that is acceptable to the department, then within 1

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year after the county hires the consultant, the department shall conduct a review of the county's program to determine whether or not the county program can be approved.

(10) If any of the following occur, the department shall hire a consultant to administer the county's program:

(a) The county does not notify the department of its intent to hire a consultant under subsection (9).

(b) The county does not hire a consultant that is acceptable to the department within 60 days after notifying the department of its intent to hire a consultant under subsection (9).

(c) The county remains unapproved following the department's review under subsection (9).

(11) Upon hiring a consultant under subsection (10), the department may establish a schedule of fees for inspections, review of soil erosion and sedimentation control plans, and permits for the county's program that will provide sufficient revenues to pay for the cost of the contract with the consultant, or the department may bill the county for the cost of the contract with the consultant. As used in this subsection, "cost of the contract" means the actual cost of a contract with a consultant plus the documented costs to the department in administering the contract, but not to exceed 10% of the actual cost of the contract.

(12) At any time that a county is on probation as provided for in this section, the county may request the department to conduct a review of the county's program. If, upon such review, the county has implemented appropriate changes to the county's program, the department shall approve the county's program. If the department approves a county's program under this subsection, the department shall rescind its order, stipulation, or consent agreement that placed the county on probation.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001;—Am. 2005, Act 55, Imd. Eff. June 30, 2005.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 323.1701 et seq. of the Michigan Administrative Code.

324.9106 Ordinances.

Sec. 9106. (1) Subject to subsection (3), a municipality by ordinance may provide for soil erosion and sedimentation control on public and private earth changes within its boundaries except that a township ordinance shall not be applicable within a village that has in effect such an ordinance. An ordinance may be more restrictive than, but shall not make lawful that which is unlawful under, this part and the rules promulgated under this part. If an ordinance adopted under this section is more restrictive than this part and the rules promulgated under this part, the municipal enforcing agency shall notify a person receiving a permit under the ordinance that the ordinance is more restrictive than this part and the rules promulgated under this part. The ordinance shall incorporate by reference the rules promulgated under this part that do not conflict with a more restrictive ordinance, shall designate a municipal enforcing agency responsible for administration and enforcement of the ordinance, and may set forth such other matters as the legislative body considers necessary or desirable. The ordinance shall be applicable and shall be enforced with regard to all private and public earth changes within the municipality except earth changes by an authorized public agency. The municipality may consult with a conservation district for assistance or advice in the preparation of the ordinance. The ordinance may provide penalties for a violation of the ordinance that are consistent with section 9121.

(2) An ordinance related to soil erosion and sedimentation control that is not approved by the department as conforming to the minimum requirements of this part and the rules promulgated under this part has no force or effect. A municipality shall submit a copy of its proposed ordinance or of a proposed amendment to its ordinance to the department for approval before adoption. The department shall forward a copy to the county enforcing agency of the county in which the municipality is located and the appropriate conservation district for review and comment. Within 90 days after the department receives an existing ordinance, proposed ordinance, or amendment, the department shall notify the clerk of the municipality of its approval or disapproval along with recommendations for revision if the ordinance, proposed ordinance, or amendment does not conform to the minimum requirements of this part or the rules promulgated under this part. If the department does not notify the clerk of the local unit within the 90-day period, the ordinance, proposed ordinance, or amendment shall be considered to have been approved by the department.

(3) A municipality shall not administer and enforce this part or the rules promulgated under this part or a local ordinance unless the department has approved the municipality. An approval under this section is valid for 5 years, after which the department shall review the municipality for reapproval. At least 6 months before the expiration of each succeeding 5-year approval period, the department shall complete a review of the municipality for reapproval. The department shall approve a municipality if all of the following conditions are met:

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(a) The municipality has enacted an ordinance as provided in this section that is at least as restrictive as this part and the rules promulgated under this part.

(b) The individuals with decision-making authority who are responsible for administering the soil erosion and sedimentation control program for the municipality have current certificates of training under section 9123.

(c) The municipality has submitted evidence of its ability to effectively administer and enforce a soil erosion and sedimentation control program. In determining whether the municipality has met the requirements of this subdivision, the department shall consider all of the following:

(*i*) Whether a mechanism is in place to provide funding to administer the municipality's soil erosion and sedimentation control program.

(*ii*) The adequacy of the documents proposed for use by the municipality including, but not limited to, application forms, soil erosion and sedimentation control plan requirements, permit forms, and inspection reports.

(*iii*) If the municipality has previously administered a soil erosion and sedimentation control program, whether the municipality effectively administered and enforced the program in the past or has implemented changes in its administration or enforcement procedures that the department determines will result in the municipality effectively administering and enforcing a soil erosion and sedimentation control program in compliance with this part and the rules promulgated under this part. In determining whether the municipality has met the requirement of this subparagraph, the department shall consider all of the following:

(A) Whether the municipality has had adequate funding to administer the municipality's soil erosion and sedimentation control program.

(B) Whether the municipality has conducted adequate inspections to assure minimization of soil erosion and off-site sedimentation.

(C) The effectiveness of the municipality's past compliance and enforcement efforts.

(D) The adequacy and effectiveness of the applications and soil erosion and sedimentation control plans being accepted by the municipality.

(E) The adequacy and effectiveness of the permits issued by the municipality and the inspections being performed by the municipality.

(F) The conditions at construction sites under the jurisdiction of the municipality as documented by departmental inspections.

(4) If the department determines that a municipality is not approved under subsection (3) or that a municipality that was previously approved under subsection (3) is not satisfactorily administering and enforcing this part and the rules promulgated under this part, the department shall enter an order, stipulation, or consent agreement under section 9112(7) denying the municipality authority or revoking the municipality's authority to administer a soil erosion and sedimentation control program. Upon entry of this order, stipulation, or consent agreement, the county program for the county in which the municipality is located becomes operative within the municipality.

(5) A municipality that elects to rescind its ordinance shall notify the department. Upon rescission of its ordinance, the county program for the county in which the municipality is located becomes operative within the municipality.

(6) A municipality that rescinds its ordinance or is not approved by the department to administer the program shall retain jurisdiction over projects under permit at that time. The municipality shall retain jurisdiction until the projects are completed and stabilized or the county agrees to assume jurisdiction over the permitted earth changes.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001;—Am. 2005, Act 55, Imd. Eff. June 30, 2005.

Popular name: Act 451

Popular name: NREPA

324.9107 Notice of violation.

Sec. 9107. If a local unit of government has notice that a violation of this part has occurred within the boundaries of that local unit of government, including but not limited to a violation attributable to an earth change by an authorized public agency, the local unit of government shall notify the appropriate county enforcing agency and municipal enforcing agency and the department of the violation.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

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324.9108 Permit; deposit as condition for issuance.

Sec. 9108. As a condition for the issuance of a permit, the county enforcing agency or municipal enforcing agency may require the applicant to deposit with the clerk of the county or municipality in the form of cash, a certified check, or an irrevocable bank letter of credit, whichever the applicant selects, or a surety bond acceptable to the legislative body of the county or municipality or to the county enforcing agency or municipal enforcing agency, in an amount sufficient to assure the installation and completion of such protective or corrective measures as may be required by the county enforcing agency or municipal enforcing agency.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.9109 Agreement between public agency or county or municipal enforcing agency and conservation district; purpose; reviews and evaluations of agency's programs or procedures; agreement between person engaged in agricultural practices and conservation district; notification; enforcement.

Sec. 9109. (1) An authorized public agency, county enforcing agency, or municipal enforcing agency may enter into an agreement with a conservation district for assistance and advice in overseeing and reviewing compliance with soil erosion and sedimentation control procedures and in reviewing existing or proposed earth changes, earth change plans, or site plans with regard to technical matters pertaining to soil erosion and sedimentation control. In addition to or in the absence of such agreements, conservation districts may perform periodic reviews and evaluations of the authorized public agency's, county enforcing agency's, or municipal enforcing agency's programs or procedures pursuant to standards and specifications developed in cooperation with the respective districts and as approved by the department. These reviews and evaluations shall be submitted to the department for appropriate action.

(2) A person engaged in agricultural practices may enter into an agreement with the appropriate conservation district to pursue agricultural practices in accordance with and subject to this part, the rules promulgated under this part, and any applicable local ordinance. If a person enters into an agreement with a conservation district, the conservation district shall notify the county enforcing agency or municipal enforcing agency or the department in writing of the agreement. Upon entering into the agreement under this subsection, a person is not subject to permits required under this part, but is required to develop project specific soil erosion and sedimentation control plans and is subject to the remedies provided for in this part for violations of this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.9110 Designation as authorized public agency; application; submission of procedures; variance; approval.

Sec. 9110. (1) Subject to subsection (4), a state agency or an agency of a local unit of government may apply to the department for designation as an authorized public agency by submitting to the department the soil erosion and sedimentation control procedures governing all earth changes normally undertaken by the agency. If the applicant is an agency of a local unit of government, the department shall submit the procedures to the county enforcing agency and the appropriate conservation district for review. The county enforcing agency and the conservation district shall submit their comments on the procedures to the department within 60 days. If the applicant is a state agency, the department shall submit the procedures to the department of agriculture for review, and the department of agriculture shall submit its comments on the procedures to the department within 60 days.

(2) Subject to subsection (4), if the department finds that the soil erosion and sedimentation control procedures of the state agency or the agency of the local unit of government meet the requirements of this part and rules promulgated under this part, the department shall designate the agency as an authorized public agency.

(3) Subject to subsection (4), after approval of the procedures and designation as an authorized public agency pursuant to subsection (2), all earth changes maintained or undertaken by the authorized public agency shall be undertaken pursuant to the approved procedures. If determined necessary by the department and upon request of an authorized public agency, the department may grant a variance from the provisions of this

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subsection.

(4) A state agency or an agency of a local unit of government shall not administer and enforce this part and the rules promulgated under this part as an authorized public agency unless the department has approved the agency under this section. An approval under this section is valid for 5 years, after which the department shall review the agency for reapproval. At least 6 months before the expiration of each succeeding 5-year period, the department shall complete a review of the authorized public agency for reapproval. The department shall approve a state agency or an agency of a local unit of government if all of the following conditions are met:

(a) The agency has adopted soil erosion and sedimentation control procedures that are at least as restrictive as this part and the rules promulgated under this part.

(b) The individuals with decision-making authority who are responsible for administering the soil erosion and sedimentation control procedures have current certificates of training under section 9123.

(c) The agency has submitted evidence of its ability to effectively administer soil erosion and sedimentation control procedures. In determining whether the agency has met the requirement of this subdivision, the department shall consider all of the following:

(*i*) Funding to administer the agency's soil erosion and sedimentation control program.

(*ii*) The agency's plans for inspections to assure minimization of soil erosion and off-site sedimentation.

(*iii*) The adequacy of the agency's soil erosion and sedimentation control procedures.

(*iv*) If the agency has previously administered soil erosion and sedimentation control procedures, the agency has effectively administered these procedures or has implemented changes in their administration that the department determines will result in the agency effectively administering the soil erosion and sedimentation control procedures. In determining whether the agency has met the requirement of this subparagraph, the department shall consider all of the following:

(A) Whether the agency has had adequate funding to administer the agency's soil erosion and sedimentation control program.

(B) Whether the agency has conducted adequate inspections to assure minimization of soil erosion and off-site sedimentation.

(C) The effectiveness of the agency's past compliance and enforcement efforts.

(D) The adequacy of the agency's soil erosion and sedimentation control plans and procedures as required by rule.

(E) The conditions at construction sites under the jurisdiction of the agency as documented by departmental inspections.

(5) If the department determines that a state agency or an agency of a local unit of government is not approved under subsection (4) or that a state agency or an agency of a local unit of government that was previously approved under subsection (4) is not satisfactorily administering and enforcing this part and the rules promulgated under this part, the department shall enter an order, stipulation, or consent agreement under section 9112(7) denying or revoking the designation of the state agency or agency of a local unit of government as an authorized public agency.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001;—Am. 2005, Act 55, Imd. Eff. June 30, 2005.

Popular name: Act 451

Popular name: NREPA

324.9111 Repealed. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Compiler's note: The repealed section pertained to statements and certificates relating to plats.

Popular name: Act 451

Popular name: NREPA

324.9112 Earth change; permit required; effect of property transfer; violation; notice; hearing; answer; evidence; stipulation or consent order; final order of determination.

Sec. 9112. (1) A person shall not maintain or undertake an earth change governed by this part, the rules promulgated under this part, or an applicable local ordinance, except in accordance with this part and the rules promulgated under this part or with the applicable local ordinance, and except as authorized by a permit issued by the appropriate county enforcing agency or municipal enforcing agency pursuant to part 13.

(2) The owner of property that is subject to a permit under this part is responsible for compliance with the terms of the permit that apply to that property.

(3) Except as provided in subsection (4), if property subject to a permit under this part is transferred, both of the following are transferred with the property:

(a) The permit, including the permit obligations and conditions.

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(b) Responsibility for any violations of the permit that exist on the date the property is transferred.

(4) If property is subject to a permit under this part and a parcel of the property, but not the entire property, is transferred, both of the following are transferred with the parcel:

(a) The permit obligations and conditions with respect to that parcel, but not the permit itself.

(b) Responsibility for any violations of the permit with respect to that parcel that exist on the date the parcel is transferred.

(5) If property subject to a permit under this part is proposed to be transferred, the transferor shall notify the transferee of the permit in writing on a form developed by the department and provided by the county enforcing agency or municipal enforcing agency. The notice shall inform the transferee of the requirements of subsection (2) and, as applicable, subsection (3) or (4). The notice shall include a copy of the permit. The transferor and transferee shall sign the notice, and the transferor shall submit the signed notice to the county enforcing agency or municipal enforcing agency before the property is transferred.

(6) A county enforcing agency or municipal enforcing agency may charge a fee for the transfer of a permit under subsection (3) or (4). The fee shall not exceed the administrative costs of transferring the permit. Fees collected under this subsection shall only be used for the enforcement and administration of this part by the enforcing agency.

(7) If in the opinion of the department a person, including an authorized public agency, violates this part, the rules promulgated under this part, or an applicable local ordinance, or a county enforcing agency or municipal enforcing agency fails to enforce this part, the rules promulgated under this part, or an applicable local ordinance, the department may notify the alleged offender in writing of its determination. If the department places a county on probation under section 9105, a municipality is not approved under section 9106, or a state agency or agency of a local unit of government is not approved under section 9110, or if the department determines that a municipal enforcing agency or authorized public agency is not satisfactorily administering and enforcing this part and rules promulgated under this part, the department shall notify the county, municipality, state agency, or agency of a local unit of government in writing of its determination or action. The notice shall contain, in addition to a statement of the specific violation or failure that the department believes to exist, a proposed order, stipulation for agreement, or other action that the department considers appropriate to assure timely correction of the violation or failure. The notice shall set a date for a hearing not less than 4 nor more than 8 weeks from the date of the notice of determination. Extensions of the date of the hearing may be granted by the department or on request. At the hearing, any interested party may appear, present witnesses, and submit evidence. A person who has been served with a notice of determination may file a written answer to the notice of determination before the date set for hearing or at the hearing may appear and present oral or written testimony and evidence on the charges and proposed requirements of the department to assure correction of the violation or failure. If a person served with the notice of determination agrees with the proposed requirements of the department and notifies the department of that agreement before the date set for the hearing, disposition of the case may be made with the approval of the department by stipulation or consent agreement without further hearing. The final order of determination following the hearing, or the stipulation or consent order as authorized by this section and approved by the department, is conclusive unless reviewed in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, in the circuit court of Ingham county, or of the county in which the violation occurred, upon petition filed within 15 days after the service upon the person of the final order of determination.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2004, Act 565, Imd. Eff. Jan. 3, 2005.

Popular name: Act 451

Popular name: NREPA

324.9113 Injunction; inspection and investigation.

Sec. 9113. (1) Notwithstanding the existence or pursuit of any other remedy, the department or a county enforcing agency or municipal enforcing agency may maintain an action in its own name in a court of competent jurisdiction for an injunction or other process against a person to restrain or prevent violations of this part.

(2) At any reasonable time, an agent appointed by the department, a county enforcing agency, or a municipal enforcing agency may enter upon any private or public property for the purpose of inspecting and investigating conditions or practices that may be in violation of this part. However, an investigation or inspection under this subsection shall comply with the United States constitution and the state constitution of 1963.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001;—Am. 2005, Act 55, Imd. Eff. June 30, 2005.

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Popular name: Act 451

Popular name: NREPA

324.9114 Additional rules.

Sec. 9114. In order to carry out their functions under this part, the department and the department of agriculture may promulgate rules in addition to those otherwise authorized in this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 323.1701 et seq. of the Michigan Administrative Code.

324.9115 Logging, mining, or land plowing or tilling; permit exemption; “mining” defined.

Sec. 9115. (1) Subject to subsection (2), a person engaged in the logging industry, the mining industry, or the plowing or tilling of land for the purpose of crop production or the harvesting of crops is not required to obtain a permit under this part. However, all earth changes associated with the activities listed in this section shall conform to the same standards as if they required a permit under this part. The exemption from obtaining a permit under this subsection does not include either of the following:

(a) Access roads to and from the site where active mining or logging is taking place.

(b) Ancillary activities associated with logging and mining.

(2) This part does not apply to a metallic mineral mining activity that is regulated under a mining and reclamation plan or a mining, reclamation, and environmental protection plan if the plan contains soil erosion and sedimentation control provisions and is approved by the department under part 631 or 632, respectively.

(3) A person is not required to obtain a permit from a county enforcing agency or a municipal enforcing agency for earth changes associated with well locations, surface facilities, flowlines, or access roads relating to oil or gas exploration and development activities regulated under part 615, if the application for a permit to drill and operate under part 615 contains a soil erosion and sedimentation control plan that is approved by the department under part 615. However, those earth changes shall conform to the same standards as required for a permit under this part. This subsection does not apply to a multisource commercial hazardous waste disposal well as defined in section 62506a.

(4) As used in this section, "mining" does not include the removal of clay, gravel, sand, peat, or topsoil.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001;—Am. 2011, Act 214, Imd. Eff. Nov. 8, 2011.

Popular name: Act 451

Popular name: NREPA

324.9115a Earth change activities not requiring permit; violations.

Sec. 9115a. (1) Notwithstanding any other provision of this part, a person is not required to obtain a permit from a county or municipal enforcing agency for earth changes associated with the following agricultural practices if the earth change activities do not result in or contribute to soil erosion or sedimentation of the waters of the state or a discharge of sediment off-site:

(a) The construction, maintenance, or removal of fences and fence lines.

(b) The removal of tree or shrub stumps or roots.

(c) The installation of drainage tile, irrigation, or electrical lines.

(d) The construction or maintenance of 1 or more ponds that meet all of the following:

(*i*) The earth change associated with the construction or maintenance is less than 5 acres.

(*ii*) The earth change associated with the construction or maintenance does not result in a discharge of storm water into the waters of the state.

(*iii*) The earth change associated with the construction or maintenance is not part of a larger plan of development. As used in this subparagraph, "larger plan of development" means a contiguous area where multiple separate and distinct construction activities are occurring under a single plan as identified in documentation or physical demarcation indicating where construction activities may occur.

(2) Notwithstanding any other provision of this part, a residential property owner who causes the following activities to be conducted on individual residential property owned and occupied by him or her is not required to obtain a permit under this part if the earth change activities do not result in or contribute to soil erosion or sedimentation of the waters of the state or a discharge of sediment off-site:

(a) An earth change of a minor nature that is stabilized within 24 hours of the initial earth disturbance.

(b) Gardening, if the natural elevation of the area is not raised.

(c) Post holes for fencing, decks, utility posts, mailboxes, or similar applications, if no additional grading

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or earth change occurs for use of the post holes.

(d) Removal of tree stumps, shrub stumps, or roots resulting in an earth change not to exceed 100 square feet.

(e) All of the following activities, if soil erosion and sedimentation controls are implemented, the earth change is stabilized within 24 hours of the initial earth disturbance, and soil erosion or sedimentation to adjacent properties or the waters of the state has not or will not reasonably occur:

(*i*) Planting of trees, shrubs, or other similar plants.

(*ii*) Seeding or reseeding of lawns of less than 1 acre if the seeded area is at least 100 feet from the waters of the state.

(*iii*) Seeding or reseeding of lawns closer than 100 feet from the waters of the state if the area to be seeded or reseeded does not exceed 100 square feet.

(*iv*) The temporary stockpiling of soil, sand, or gravel not greater than a total of 10 cubic yards on the property if the stockpiling occurs at least 100 feet from the waters of the state.

(*v*) Seawall maintenance that does not exceed 100 square feet.

(3) Exemptions provided in this section shall not be construed as exemptions from enforcement procedures under this part or the rules promulgated under this part if the exempted activities cause or result in a violation of this part or the rules promulgated under this part.

History: Add. 2005, Act 56, Imd. Eff. June 30, 2005;—Am. 2016, Act 2, Eff. Feb. 25, 2016.

Popular name: Act 451

Popular name: NREPA

324.9116 Reduction of soil erosion or sedimentation by owner.

Sec. 9116. A person who owns land on which an earth change has been made that may result in or contribute to soil erosion or sedimentation of the waters of the state shall implement and maintain soil erosion and sedimentation control measures that will effectively reduce soil erosion or sedimentation from the land on which the earth change has been made.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.9117 Notice of determination.

Sec. 9117. If the county enforcing agency or municipal enforcing agency that is responsible for enforcing this part and the rules promulgated under this part determines that soil erosion or sedimentation of adjacent properties or the waters of the state has or will reasonably occur from land in violation of this part or the rules promulgated under this part or an applicable local ordinance, the county enforcing agency or municipal enforcing agency may seek to enforce a violation of this part by notifying the person who owns the land, by mail, with return receipt requested, of its determination. The notice shall contain a description of the violation and what must be done to remedy the violation and shall specify a time to comply with this part and the rules promulgated under this part or an applicable local ordinance.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.9118 Compliance; time.

Sec. 9118. Within 5 days after a notice of violation has been issued under section 9117, a person who owns land subject to this part and the rules promulgated under this part shall implement and maintain soil erosion and sedimentation control measures in conformance with this part, the rules promulgated under this part, or an applicable local ordinance.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.9119 Entry upon land; construction, implementation, and maintenance of soil erosion and sedimentation control measures; cost.

Sec. 9119. Except as otherwise provided in this section, not sooner than 5 days after notice of violation of this part has been mailed under section 9117, if the condition of the land, in the opinion of the county enforcing agency or municipal enforcing agency, may result in or contribute to soil erosion or sedimentation

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of adjacent properties or to the waters of the state, and if soil erosion and sedimentation control measures in conformance with this part and the rules promulgated under this part or an applicable local ordinance are not in place, the county enforcing agency or municipal enforcing agency, or a designee of either of these agencies, may enter upon the land and construct, implement, and maintain soil erosion and sedimentation control measures in conformance with this part and the rules promulgated under this part or an applicable local ordinance. However, the enforcing agency shall not expend more than $10,000.00 for the cost of the work, materials, labor, and administration without prior written notice in the notice provided in section 9117 for the person who owns the land that the expenditure of more than $10,000.00 may be made. If more than $10,000.00 is to be expended under this section, then the work shall not begin until at least 10 days after the notice of violation has been mailed.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.9120 Reimbursement of county or municipal enforcing agency; lien for expenses; priority; collection and treatment of lien.

Sec. 9120. (1) All expenses incurred by a county enforcing agency or a municipal enforcing agency under section 9119 to construct, implement, and maintain soil erosion and sedimentation control measures to bring land into conformance with this part and the rules promulgated under this part or an applicable local ordinance shall be reimbursed to the county enforcing agency or municipal enforcing agency by the person who owns the land.

(2) The county enforcing agency or municipal enforcing agency shall have a lien for the expenses incurred under section 9119 of bringing the land into conformance with this part and the rules promulgated under this part or an applicable local ordinance. However, with respect to single-family or multifamily residential property, the lien for such expenses shall have priority over all liens and encumbrances filed or recorded after the date of such expenditure. With respect to all other property, the lien for such expenses shall be collected and treated in the same manner as provided for property tax liens under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.9121 Violations; penalties.

Sec. 9121. (1) A person who violates this part is responsible for either of the following:

(a) If the action is brought by a county enforcing agency or a municipal enforcing agency of a local unit of government that has enacted an ordinance under this part that provides a penalty for violations, the person is responsible for a municipal civil infraction and may be ordered to pay a civil fine of not more than $2,500.00.

(b) If the action is brought by the state or a county enforcing agency of a county that has not enacted an ordinance under this part, the person is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $2,500.00.

(2) A person who knowingly violates this part or knowingly makes a false statement in an application for a permit or in a soil erosion and sedimentation control plan is responsible for the payment of a civil fine of not more than $10,000.00 for each day of violation.

(3) A person who knowingly violates this part after receiving a notice of determination under section 9112 or 9117 is responsible for the payment of a civil fine of not less than $2,500.00 or more than $25,000.00 for each day of violation.

(4) Civil fines collected under subsections (2) and (3) shall be deposited as follows:

(a) If the state filed the action under this section, in the general fund of the state.

(b) If a county enforcing agency or municipal enforcing agency filed the action under this section, with the county or municipality that filed the action.

(c) If an action was filed jointly by the state and a county enforcing agency or municipal enforcing agency, the civil fines collected under this subsection shall be divided in proportion to each agency's involvement as mutually agreed upon by the agencies. All fines going to the department shall be deposited into the general fund of the state.

(5) A default in the payment of a civil fine or costs ordered under this section or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948.

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(6) In addition to a fine assessed under this section, a person who violates this part is liable to the state for damages for injury to, destruction of, or loss of natural resources resulting from the violation. The court may order a person who violates this part to restore the area or areas affected by the violation to their condition as existing immediately prior to the violation.

(7) This section applies to an authorized public agency, in addition to other persons. This section does not apply to a county enforcing agency or a municipal enforcing agency with respect to its administration and enforcement of this part and rules promulgated under this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1996, Act 173, Imd. Eff. Apr. 18, 1996;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.9122 Severability.

Sec. 9122. If any provision of this part is declared by a court to be invalid, the invalid provision shall not affect the remaining provisions of the part that can be given effect without the invalid provision. The validity of the part as a whole or in part shall not be affected, other than the provision invalidated.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.9123 Training program; certificate; fees.

Sec. 9123. (1) Beginning 3 years after the effective date of the 2000 amendments to this section, each individual who is responsible for administering this part and the rules promulgated under this part or a local ordinance and who has decision-making authority for soil erosion and sedimentation control plan development or review, inspections, permit issuance, or enforcement shall be trained by the department. The department shall issue a certificate of training to individuals under this section if they do both of the following:

(a) Complete a soil erosion and sedimentation control training program sponsored by the department.

(b) Pass an examination on the subject matter covered in the training program under subdivision (a).

(2) A certificate of training under subsection (1) is valid for 5 years. For recertifications, the department may offer a refresher course or other update in lieu of the requirements of subsection (1)(a) and (b).

(3) The department may charge fees for administering the training program and the examination under this section that are not greater than the department's cost of administering the training program and the examination. All fees collected under this section shall be deposited into the soil erosion and sedimentation control training fund created in section 9123a.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.9123a Soil erosion and sedimentation control training fund; creation; disposition of funds; lapse; expenditures.

Sec. 9123a. (1) The soil erosion and sedimentation control training fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the soil erosion and sedimentation control training fund. The state treasurer shall direct the investment of the soil erosion and sedimentation control training fund. The state treasurer shall credit to the soil erosion and sedimentation control training fund interest and earnings from fund investments.

(3) Money in the soil erosion and sedimentation control training fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall expend money from the fund, upon appropriation, only to administer the soil erosion and sedimentation control training program and examination under section 9123.

History: Add. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

PART 93
SOIL CONSERVATION DISTRICTS

324.9301 Definitions.

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Sec. 9301. As used in this part:

(a) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

(b) "Board" or "conservation district board" means the governing body of a conservation district.

(c) "Compliance assistance agent" means an individual who provides technical assistance to individuals, organizations, agencies, or others to aid them in complying with federal and state laws and local conservation ordinances.

(d) "Conservation species" means those plant species beneficial for conservation practices as included on the list prepared under section 9304a by the conservation species advisory panel.

(e) "Conservation species advisory panel" means the conservation species advisory panel created in section 9304a.

(f) "Department" means the department of agriculture and rural development.

(g) "Director" means 1 of the members of the conservation district board, elected or appointed in accordance with this part.

(h) "District" or "conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with this part, for the purposes, with the powers, and subject to the restrictions set forth in this part.

(i) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(j) "Landowner" includes any person who holds title to or has contracted to purchase any land lying within a district organized under this part or former 1937 PA 297.

(k) "Person" means an individual, partnership, or corporation.

(*l*) "Plant rescue" means to physically move native conservation species of plants from 1 location in Michigan to another location in Michigan for the purpose of reestablishing the native conservation species.

(m) "Qualified forester" means that term as defined in section 51301.

(n) "Resident" means a person who is of legal age to vote and can demonstrate residency in the district with 1 piece of identification.

(o) "State" means this state.

(p) "United States" or "agencies of the United States" includes the United States of America, the natural resources conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999;—Am. 2013, Act 45, Imd. Eff. June 6, 2013.

Popular name: Act 451

Popular name: NREPA

324.9302 Declaration of policy.

Sec. 9302. It is the policy of the legislature to provide for the conservation of the natural resources of the state, including soil, water, farmland, forestland, and other natural resources, and to provide for the control and prevention of soil erosion, and thereby to conserve the natural resources of this state, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999;—Am. 2013, Act 45, Imd. Eff. June 6, 2013.

Popular name: Act 451

Popular name: NREPA

324.9303 Conducting business at public meeting; notice; availability of writings to public.

Sec. 9303. (1) The business that a conservation district board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, in addition to any other notice prescribed in this part.

(2) A writing prepared, owned, used, in the possession of, or retained by a conservation district board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999.

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Popular name: Act 451

Popular name: NREPA

324.9304 Additional duties and powers of department.

Sec. 9304. In addition to the other duties and powers conferred upon the department under this part, the department has the following duties and powers:

(a) To offer such assistance as may be appropriate to the directors of conservation districts in implementing any of their responsibilities under this part and as otherwise provided by law.

(b) To keep the directors of each of the districts informed of the activities and experience of all other districts and to facilitate cooperation and sharing of advice and experience between the districts.

(c) To approve and coordinate the programs of all conservation districts.

(d) To secure the cooperation and assistance of the United States and any of its agencies, and the state and any of its agencies, in the work of the districts, and to formulate policies and procedures as the department considers necessary for the extension of aid in any form from federal or state agencies to the districts.

(e) To disseminate information throughout the state concerning the activities and programs of the conservation districts and to encourage the formation of districts in areas where their organization is desirable.

(f) To review district budgets and financial information, including audit reports.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999;—Am. 2013, Act 45, Imd. Eff. June 6, 2013.

Popular name: Act 451

Popular name: NREPA

324.9304a Conservation species advisory panel; creation; membership; establishment of conservation species list.

Sec. 9304a. (1) The conservation species advisory panel is created within the department. The conservation species advisory panel shall consist of the following members selected by the director of the department and approved by the commission of agriculture:

(a) Two representatives of the department as follows:

(*i*) One individual from the pesticide and plant management division or its successor agency.

(*ii*) One individual from the environmental division or its successor agency.

(b) One individual representing the department of natural resources.

(c) One individual representing the natural resource conservation service.

(d) Two representatives from Michigan state university as follows:

(*i*) One individual from the department of horticulture or its successor department.

(*ii*) One individual from the department of forestry or its successor department.

(e) One individual representing conservation districts.

(f) One individual from a statewide organization representing nursery and landscaping interests in the state.

(g) One individual from a statewide organization representing seedling growers' interests in the state.

(2) By December 1 of each year, the conservation species advisory panel shall establish a list of conservation species for the following calendar year that may be propagated, planted, harvested, sold, or rescued as part of a plant rescue operation. However, conservation species on this list that are propagated, planted, or rescued during that calendar year may be sold, removed, or reestablished in subsequent years even if the species is removed from the list in a subsequent year.

History: Add. 1998, Act 463, Imd. Eff. Jan. 4, 1999.

Popular name: Act 451

Popular name: NREPA

324.9305 Boundaries; petition to change district's name.

Sec. 9305. (1) Boundaries of conservation districts shall include cities, townships, and incorporated villages.

(2) A conservation district's board may petition the department to change the district's name. The petition form shall be provided by the department. The department shall give due consideration to the petition and, if the request is determined to be needed and practical, shall approve the change in name and request the secretary of state to enter the new name in the secretary of state's official records of the district.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999.

Popular name: Act 451

Popular name: NREPA

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324.9306 Repealed. 1998, Act 463, Imd. Eff. Jan. 4, 1999.

Compiler's note: The repealed section pertained to election of district directors.

Popular name: Act 451

Popular name: NREPA

324.9307 Conservation district board; directors; chairperson; terms; annual meeting; election; notice; vacancies; certification; special election; quorum; expenses; employees; legal services; delegation of powers and duties; copies of documents; duties of board; eligibility for grant; duties of professional forester; rules; duties of conservation district; removal of director; designation and function of legislative representative.

Sec. 9307. (1) A conservation district board shall consist of 5 directors elected or appointed as provided in this part. The board shall designate a chairperson annually.

(2) Except as provided in subsection (6), the term of office of each director is 4 years. Except as otherwise provided in this section, all directors shall be elected at an annual meeting by residents of the district. The election shall be nonpartisan and the directors shall be elected by the residents of the district at large. To become a candidate for director, at least 60 days prior to the annual meeting, an individual shall file at the district office a petition signed by 5 residents of the district. A candidate must be a resident of the district. The annual meeting shall be held at a date determined by the board. Notice of the annual meeting shall be published in the official newspaper of record for the area in which the district is located at least 45 days prior to the date of the annual meeting. This notice shall include the date, time, and location of the annual meeting, an agenda of items to be considered at the meeting, and a list of all candidates for directors of the district. A resident of a district who is unable to attend the annual meeting may vote for the directors of the district by absentee ballot as follows:

(a) In person at the district office, during regular business hours of the district office, at any time after publication of the notice and prior to the annual meeting.

(b) By mail received at the district office at any time after publication of the notice and prior to the annual meeting.

(3) Following the annual meeting, director elections shall be certified by the department. A director shall hold office until a successor has been elected and qualified. Vacancies shall be filled by appointment by the board until the next annual meeting.

(4) The department shall notify the district of its determination on election certification within 90 days after the election. If the department does not certify the director election, the board shall call a special election. The procedures for the special election shall be the same as those for an election at the annual meeting. However, if the board received notification that the department would not be able to certify the director elections from a special election at least 120 days before the next annual meeting, the vacancies shall be filled at the next annual meeting.

(5) A majority of the directors constitutes a quorum of the board, and the concurrence of a majority in any matter within their duties is required for the board's determination. A director is entitled to expenses, including traveling expenses necessarily incurred in the discharge of his or her duties. A director may be paid a per diem for time spent undertaking his or her duties as a director.

(6) If at any time the board has an insufficient number of directors to constitute a quorum, the department shall appoint directors to fill the vacancies on the board. The appointed directors shall serve until new directors are elected as provided for in this section at the next annual meeting and the election is certified by the department. However, new directors who are elected to fill vacancies shall serve for the remainder of the vacated terms.

(7) The board may employ a secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as the board may require, and shall determine their qualifications, duties, and compensation. Upon request of the board, the attorney general may, at his or her discretion, provide legal services to the district. The board may delegate to its chairperson, to 1 or more directors, or to 1 or more agents or employees any powers and duties that the board considers proper. The board shall furnish to the department, upon request, copies of ordinances, rules, regulations, orders, contracts, forms, and other documents that the board adopts or utilizes and any other information concerning the board's activities that the department may require in the performance of its duties under this part.

(8) The board shall do all of the following:

(a) Provide for the execution of surety bonds for all district employees and officers who are entrusted with funds or property.

(b) Provide for the keeping of a full and accurate record of all proceedings and of all resolutions,

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regulations, and orders issued or adopted.

(c) Determine the fiscal year of the district.

(9) To be eligible for a grant of $50,000.00 or more from the department, a district shall do all of the following:

(a) Annually submit to the department a budget setting forth the purpose and amount of the expenses expected to be incurred and the source and amount of revenue expected to be received during the ensuing fiscal year.

(b) Maintain accurate financial records of receipts and disbursements and uniform accounting in accordance with generally accepted accounting principles under procedures prescribed by the department.

(c) Provide for a biennial independent certified audit by a certified public accountant of the financial records, accounts, and procedures of the district. The audit report shall show profits and losses and the financial condition of the district.

(d) Agree to comply with subsection (10), and agree to return any grant funds received if subsection (10) is violated.

(10) A professional forester employed under a grant described in subsection (9) shall not use his or her position to do either or both of the following:

(a) Compete with a private sector business.

(b) Develop a client base for forestry consultation during hours when he or she is not employed by the district.

(11) The department may promulgate rules to implement subsection (9). However, rules promulgated under this subsection shall remain in effect not later than June 11, 2016.

(12) The board is responsible for the exercise of the powers and the performance of the duties of a conservation district under this part.

(13) Any director may be removed by the department upon notice and hearing for neglect of duty or malfeasance in office, but for no other reason.

(14) The board may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the board on all questions of program and policy that may affect the property, water supply, or other interests of the municipality or county.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Eff. June 1, 1999;—Am. 2002, Act 107, Imd. Eff. Mar. 27, 2002;—Am. 2004, Act 439, Imd. Eff. Dec. 21, 2004;—Am. 2013, Act 45, Imd. Eff. June 6, 2013;—Am. 2013, Act 114, Imd. Eff. Sept. 24, 2013.

Popular name: Act 451

Popular name: NREPA

324.9308 Powers of district and board generally; restrictions.

Sec. 9308. (1) A conservation district organized under this part constitutes a governmental subdivision of this state and a public body corporate and politic, exercising public powers, and a conservation district and the conservation district board has all of the following powers, in addition to powers otherwise granted in this part:

(a) To conduct surveys, investigations, and research relating to the conservation of farmland, forestland, and natural resources, to publish the results of the surveys, investigations, or research, and to disseminate that information upon obtaining the consent of the landowner or the necessary rights or interest in the lands. In order to avoid duplication of research activities, a district shall not initiate any research program except in cooperation with the government of this state or any of its agencies or with the United States.

(b) To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction of the lands, and on any other lands within the district upon obtaining the consent of the owner of the lands or the necessary rights or interest in the lands, to demonstrate by example the means, methods, and measures by which farmland, forestland, and natural resources may be conserved and soil erosion in the form of soil blowing and soil washing may be prevented and controlled.

(c) To carry out preventive and control measures within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and other measures to achieve purposes listed in declaration of policy, on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction of the lands, and on any other lands within the district upon obtaining the consent of the landowners or the necessary rights or interests in the lands.

(d) To cooperate or enter into agreements with and, within the limits of appropriations made available to it

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by law, to furnish financial or other aid to any agency, governmental or otherwise, or any landowner within the district or his or her designated representative, in the conducting of erosion-control and prevention operations within the district, subject to conditions as the directors consider necessary to advance the purposes of this part.

(e) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests in property; to maintain, administer, and improve any properties acquired, to receive income from the properties, and to expend income in carrying out the purposes and provisions of this part; and to sell, lease, or otherwise dispose of any of its property or interests in property in furtherance of the purposes and provisions of this part.

(f) To make available, on the terms it prescribes, to landowners or their designated representatives within the district and to other conservation districts, agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings, and other material or equipment that will assist landowners or their designated representatives to carry on operations upon their lands for the conservation of farmland, forestland, and natural resources and for the prevention and control of soil erosion.

(g) To engage in plant rescue operations and to propagate, plant, harvest, and, subject to section 9304a, sell only conservation species. A conservation district that violates this subdivision is subject to a civil fine of not more than $100.00 per day of violation. An action to enforce this subdivision may be brought by the state or a county in the circuit court for the county in which the conservation district is located or in which the violation occurred.

(h) To provide technical assistance to other conservation districts.

(i) To construct, improve, and maintain structures as may be necessary or convenient for the performance of any of the operations authorized in this part.

(j) To develop comprehensive plans for the conservation of farmland, forestland, and natural resources and for the control and prevention of soil erosion within the district or other conservation districts. The plans shall specify, in such detail as is possible, the acts, procedures, performances, and avoidances that are necessary or desirable for the effectuation of the plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to publish the plans and information described in this subdivision and bring them to the attention of residents of the district.

(k) To take over, by purchase, lease, or otherwise, and to administer any farmland, forestland, or natural resource conservation project located within its boundaries undertaken by the United States or any of its agencies or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies or of this state or any of its agencies, any farmland, forestland, or natural resource conservation project within its boundaries; to act as agent for the United States or any of its agencies or for this state or any of its agencies in connection with the acquisition, construction, operation, or administration of any farmland, forestland, or natural resource conservation project within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies or from this state or any of its agencies, and to use or expend the money, services, materials, or other contributions in carrying on its operations; and to accept money, gifts, and donations from any other source not specified in this subdivision.

(*l*) To sue and be sued in the name of the district; to have a seal that is judicially noticed; to have perpetual succession unless terminated as provided in this part; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and to make, and from time to time amend and repeal, rules and regulations in a manner that is not inconsistent with this part to carry into effect its purposes and powers.

(m) To borrow money for facilities or equipment for conservation purposes and pledge the assets of the district as collateral against loans. Any money borrowed shall be solely the obligation of the conservation district and not the obligation of the state or any other public entity in the state.

(n) As a condition to the extension of any benefit under this part to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the directors may require contributions in money, services, materials, or otherwise to any operation conferring the benefits, and may require landowners to enter into and perform agreements or covenants as to the permanent use of the lands that will tend to prevent or control erosion on those lands.

(o) To act as a compliance assistance agent for other federal, state, and county laws.

(p) To act as the enforcing agency for a county if designated under section 9105.

(q) To collaborate with the department in reviewing applications for exemption as qualified forest property under section 7jj of the general property tax act, 1893 PA 206, MCL 211.7jj[1].

(r) Subject to subsection (2), in cooperation with the department, to evaluate nonindustrial private forestlands.

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(s) Subject to subsection (3), to provide landowners any of the following:

(*i*) Technical assistance regarding potential environmental, ecological, and economic benefits of forestry, wildlife habitat, and wetland development and restoration.

(*ii*) Contact information for qualified foresters.

(*iii*) Contact information for other forest resource professionals that may have voluntarily provided information to the department.

(2) Except as otherwise provided in this subsection, a conservation district shall not develop management plans for nonindustrial private forestlands. A district shall provide a landowner upon request with a list of qualified foresters to develop management plans. The list shall be developed and maintained by the department. If requested by a landowner, the conservation district shall post on its website notice that the landowner is seeking forest management plan preparation; timber harvesting, marketing, or thinning; or similar services. If, after the notice is posted for at least 30 days on the conservation district's website, a landowner is unable to identify a private forester willing to develop a forest management plan, the conservation district may, upon approval by the department, prepare a forest management plan for the landowner.

(3) The exercise of powers under subsection (1)(s) does not affect the regulatory authority of any state department.

(4) Unless authorized by the county board of commissioners of each county in which a conservation district is located, a conservation district shall not enforce state or federal laws.

(5) Unless otherwise specifically provided by law, provisions with respect to the acquisition, operation, or disposition of property by other public bodies are not applicable to a district organized under this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999;—Am. 2013, Act 45, Imd. Eff. June 6, 2013.

Popular name: Act 451

Popular name: NREPA

324.9309 Cooperation between districts.

Sec. 9309. The directors of any 2 or more districts organized under this part may cooperate with one another in the exercise of any or all powers conferred in this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.9310 Cooperation of state agencies; agreements.

Sec. 9310. (1) Agencies of this state that have jurisdiction over, or are charged with the administration of, any state owned lands, and agencies of any county or other governmental subdivision of the state that have jurisdiction over, or are charged with the administration of, any county owned or other publicly owned lands, lying within the boundaries of any conservation district, shall cooperate to the fullest extent with the district in the effectuation of programs and operations undertaken by the district under this part. Agents of the district shall be given free access to enter and perform work upon such publicly owned lands.

(2) A conservation district may cooperate with and enter into agreements with a county, township, municipality, or other subdivision of state government in implementing soil, water, forestland, and related land-use projects. A county, township, municipality, or other subdivision of state government through its governing body may cooperate with and enter into agreement with a conservation district in carrying out this part and may assist a district by providing it with such materials, equipment, money, personnel, and other services.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999;—Am. 2013, Act 45, Imd. Eff. June 6, 2013.

Popular name: Act 451

Popular name: NREPA

324.9311 Repealed. 1998, Act 463, Imd. Eff. Jan. 4, 1999.

Compiler's note: The repealed section pertained to termination of district.

Popular name: Act 451

Popular name: NREPA

324.9312 Revision of boundaries; procedure.

Sec. 9312. (1) One or more conservation districts may petition the department for a revision in the

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boundaries of 1 or more conservation districts. The department shall not take action on the petition unless it is signed by a majority of the directors of each of the districts involved in the proposed revision. Within 30 days after receipt of a proper petition, the department shall cause notice of hearing to be given to the residents in the area or areas affected by the proposed revision as identified by the directors of a district and within 60 days hold a hearing to receive comments relative to the proposed change.

(2) The department shall determine if the proposed revision as petitioned for is desirable. If it finds in the affirmative, the department shall issue an order that states that the boundaries of the districts are to be moved, merged, consolidated, or separated at a date specified in the order and includes the name and the revision of the boundaries of the revised district or districts.

(3) Upon transmission of the order to the secretary of state, a certificate of due organization under seal of the state shall issue, if necessary, to the directors of the district as provided in this part. The revised district or districts shall have the same powers, duties, and functions as other districts organized under this part.

(4) The department shall appoint the first board of directors of the revised district, 1 of whom shall be appointed for a term of 1 year, 2 for a term of 2 years, and 2 for a term of 3 years. Thereafter, directors shall be elected as provided in section 9307.

(5) All assets, liabilities, records, documents, writings, or other property of whatever kind of the districts of which the consolidated district is composed shall become the property of the consolidated district, and all agreements made by, and obligations of, the former districts shall be binding upon and enforceable by the consolidated district. At the date specified in the department's order, the districts of which the consolidated district is composed shall cease to exist, and their powers and duties shall cease after that date. The consolidated district shall be governed by this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999.

Popular name: Act 451

Popular name: NREPA

324.9313 Appropriations.

Sec. 9313. The necessary expenses of any conservation districts shall be made from appropriations made for those purposes.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999.

Popular name: Act 451

Popular name: NREPA

WATERCRAFT POLLUTION

PART 95
WATERCRAFT POLLUTION CONTROL

324.9501 Definitions.

Sec. 9501. As used in this part:

(a) “Approved holding tank” means a holding tank certified by the United States coast guard under part 159 of subchapter O of chapter I of title 33 of the code of federal regulations, 33 C.F.R. part 159.

(b) “Discharge” means spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(c) “Docking facility” means a public, private, or commercial marina, yacht club, dock, or wharf used for mooring, serving, or otherwise handling watercraft.

(d) “Litter” means rubbish, refuse, waste material, garbage, offal, paper, glass, cans, bottles, trash, debris, oil, or other foreign substances of every kind and description.

(e) “Marine sanitation device” means equipment designed for installation on board a watercraft or installed on board a watercraft to receive, retain, treat, or discharge sewage.

(f) “Oil” means oil of any kind or in any form, including petroleum, fuel oil, sludge, and oil refuse.

(g) “Police officer” means a police officer as defined in section 42 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.42 of the Michigan Compiled Laws, and a conservation officer.

(h) “Portable” means not permanently affixed to a watercraft and capable of being immediately removed from a watercraft.

(i) “Sewage” means human body wastes, treated or untreated.

(j) “Watercraft” means a contrivance used or capable of being used for navigation upon water, whether or not capable of self-propulsion, including foreign and domestic vessels engaged in commerce upon the waters of this state, passenger or other cargo-carrying vessels, and privately owned recreational watercraft.

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(k) “Waters of this state” means waters within the territorial limits of this state including the waters of the Great Lakes that are under the jurisdiction of this state.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.9502 Prohibition of discharges into water.

Sec. 9502. (1) A person shall not place, throw, deposit, discharge, or cause to be discharged into or onto the waters of this state, any litter, sewage, oil, or other liquid or solid materials that render the water unsightly, noxious, or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment of the water for recreational purposes.

(2) A person shall not discharge, dump, throw, or deposit garbage, litter, sewage, or oil from a recreational, domestic, or foreign watercraft used for pleasure or for the purpose of carrying passengers, cargo, or otherwise engaged in commerce on the waters of this state.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.9503 Pollution control devices as condition to mooring or operating watercraft; rendering bypass connection, pump, or other device incapable of discharging sewage; exempting certain watercraft by rule; inspection; sticker.

Sec. 9503. (1) Except as otherwise provided in this section, a person shall not moor or operate a watercraft, or permit the mooring or operation of his or her watercraft, on the waters of this state if the watercraft has a marine sanitation device, unless the marine sanitation device is equipped with 1 or more of the following pollution control devices:

(a) An approved holding tank that will retain all sewage produced on the watercraft for subsequent disposal at approved dockside or onshore collection and treatment facilities.

(b) An incinerating device that will reduce to ash all sewage produced on the watercraft. The ash shall be disposed of onshore in a manner that will preclude pollution.

(2) Except as otherwise provided in this section, a person shall not moor or operate a watercraft on the waters of this state if the watercraft has a marine sanitation device that is equipped with any type of bypass connection, pump, or other means of directly or indirectly discharging sewage into the waters of this state, unless the bypass connection, pump, or other device has been rendered incapable of directly or indirectly discharging sewage into the waters of this state. This subsection does not prohibit a properly installed discharge line used to empty a holding tank or retention device at an onshore sewage pump-out station, or prohibit the use of a portable marine sanitation device. A bypass connection, pump, or other device shall be rendered incapable of directly or indirectly discharging sewage into the waters of this state by 1 of the following methods:

(a) Removing a section of the pipe or tubing that allows discharge of sewage into the waters of this state, placing a cap over the pipe or tubing that remains attached to the marine sanitation device, and placing a seal approved by the department over the cap in a manner that precludes reattaching the pipe or tubing without breaking the seal. To comply with the requirements of this subsection, the seal must be unbroken at the time an inspection occurs.

(b) Closing a valve that will prevent all discharge of sewage into the waters of the state, and placing a seal approved by the department over the valve handle in a manner that precludes reopening the valve without breaking the seal. To comply with the requirements of this subsection, the seal must be unbroken at the time an inspection occurs.

(3) The department, by rule, may exempt certain oceangoing watercraft from the requirements of this section.

(4) If the department conducts an inspection to determine whether a watercraft is in compliance with this section and finds that the watercraft is in compliance, the department shall place a sticker on the watercraft that lists the date that the watercraft was inspected. The department shall not inspect a watercraft for compliance with this section more than once per year except upon probable cause.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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324.9504 Pump-out facilities.

Sec. 9504. (1) Except as otherwise provided in this section, all docking facilities shall provide pump-out facilities approved by the department of public health for marine sanitation device holding tanks on the watercraft. All pump-out facility plans and installations shall be approved by the department of public health or its authorized representative.

(2) An existing docking facility that would otherwise be required by this section to have pump-out facilities is not required to have those facilities if it has a contract to use, and does use, the pump-out facilities of a docking facility in the vicinity. A contract between docking facilities under this subsection shall be approved by the department. This subsection does not apply to any docking facility that is constructed after May 1, 1990, or whose capacity is expanded by a cumulative amount exceeding 25%, or more than 15 slips, whichever is less, of the capacity existing on May 1, 1990.

(3) A docking facility that is constructed after May 1, 1990 or whose capacity is expanded by a cumulative amount exceeding 25%, or more than 15 slips, whichever is less, of the capacity existing on May 1, 1990 shall provide pump-out facilities as required by this part.

(4) A docking facility that has a capacity of 15 watercraft or less is exempt from the requirement of subsection (1).

(5) A docking facility holding only small watercraft of a type not equipped with a marine sanitation device is exempt from the requirements of subsection (1).

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.9505 Discharge of oil prohibited; removal of oil from waters, shorelines, or beaches.

Sec. 9505. (1) A person shall not discharge or permit the discharge of oil from a watercraft or a docking facility into or onto the waters of this state.

(2) The owner or operator of a watercraft who, whether directly or through any person concerned in the operation, navigation, or management of the watercraft, discharges, permits, or causes or contributes to the discharge of oil into or onto the waters of this state or adjoining shorelines or beaches shall immediately remove the oil from the waters, shorelines, or beaches. If the state removes the oil that was discharged from the watercraft, the owner or operator, or both, are liable to the state for the full amount of the costs reasonably incurred for its removal. The state may bring action against the owner or operator, or both, to recover such costs in any court of competent jurisdiction.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.9506 Inspection of watercraft, marinas and docks; facilities required.

Sec. 9506. All watercraft moored, operated, or located upon the waters of this state are subject to inspection by the department, or any peace, conservation, or police officer for the purpose of determining if the watercraft is equipped in compliance with the requirements of this part. The department may inspect marinas and other waterside facilities used by watercraft for launching, docking, or mooring purposes to determine if they are equipped with trash receptacles, sewage disposal equipment, or both. Commercial docks and wharfs designed for receiving and loading cargo or freight, or both, from commercial watercraft shall furnish facilities, if determined necessary, as prescribed by the department, to accommodate discharge of sewage from heads and galleys and for deposit of litter, garbage, trash, or bilge waters from the watercraft that utilize the docks or wharfs.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.9507 State rights reserves; prohibition of local regulations.

Sec. 9507. The state fully reserves to itself the exclusive right to establish requirements with reference to the disposal or discharge of sewage, litter, and oil from all watercraft. In order to assure statewide uniformity, the regulation by any political subdivision of the state of waste disposal from watercraft is prohibited.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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324.9508 Rules.

Sec. 9508. (1) The department may promulgate rules that are necessary or convenient to implement this part.

(2) The department of public health may promulgate rules necessary for the regulation of docking facility water supplies and sewage systems, pump-out facilities, and dockside sanitary facilities.

(3) Before promulgating a rule under this section, the department or the department of public health shall appoint and consult with an advisory committee that is representative of the major interests affected by the proposed rule.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.9510 Violation of part or rules as misdemeanor; penalty.

Sec. 9510. A person who violates this part or the rules promulgated under this part is guilty of a misdemeanor punishable by imprisonment for not more than 92 days or a fine of not more than $500.00, or both.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

CHAPTER 3
WASTE MANAGEMENT

PART 111
HAZARDOUS WASTE MANAGEMENT

324.11101 Meanings of words and phrases.

Sec. 11101. For the purposes of this part, the words and phrases defined in sections 11102 to 11104 have the meanings ascribed to them in those sections.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11102 Definitions; C to F.

Sec. 11102. (1) "Contaminant" means any of the following:

(a) Hazardous waste as defined in R 299.9203 of the Michigan administrative code.

(b) Any hazardous waste or hazardous constituent listed in 40 CFR part 261, appendix VIII or 40 CFR part 264, appendix IX.

(2) "Corrective action" means an action determined by the department to be necessary to protect the public health, safety, or welfare, or the environment, and includes, but is not limited to, investigation, evaluation, cleanup, removal, remediation, monitoring, containment, isolation, treatment, storage, management, temporary relocation of people, and provision of alternative water supplies, or any corrective action allowed under the solid waste disposal act or regulations promulgated pursuant to that act.

(3) "Designated facility" means a hazardous waste treatment, storage, or disposal facility that has received a permit or has interim status under the solid waste disposal act or has a permit from a state authorized under section 3006 of subtitle C of the solid waste disposal act, 42 USC 6926, and which, if located in this state, has an operating license issued under this part, has a legally binding agreement with the department that authorizes operation, or is subject to the requirements of section 11123(8).

(4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of a hazardous waste into or on land or water in a manner that the hazardous waste or a constituent of the hazardous waste may enter the environment, be emitted into the air, or be discharged into water, including groundwater.

(5) "Disposal facility" means a facility or a part of a facility where managed hazardous waste, as defined by rule, is intentionally placed into or on any land or water and at which hazardous waste will remain after

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closure.

(6) "Failure mode assessment" means an analysis of the potential major methods by which safe handling of hazardous wastes may fail at a treatment, storage, or disposal facility.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2010, Act 357, Imd. Eff. Dec. 22, 2010.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11103 Definitions; G to O.

Sec. 11103. (1) “Generation” means the act or process of producing hazardous waste.

(2) “Generator” means any person, by site, whose act or process produces hazardous waste as identified or listed pursuant to section 11128 or whose act first causes a hazardous waste to become subject to regulation under this part.

(3) “Hazardous waste” means waste or a combination of waste and other discarded material including solid, liquid, semisolid, or contained gaseous material that because of its quantity, quality, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible illness or serious incapacitating but reversible illness, or may pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of, or otherwise managed. Hazardous waste does not include material that is solid or dissolved material in domestic sewage discharge, solid or dissolved material in an irrigation return flow discharge, industrial discharge that is a point source subject to permits under section 402 of title IV of the federal water pollution control act, chapter 758, 86 Stat. 880, 33 U.S.C. 1342, or is a source, special nuclear, or by-product material as defined by the atomic energy act of 1954, chapter 1073, 68 Stat. 919.

(4) “Hazardous waste management” means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, recycling, and disposal of hazardous waste.

(5) “Landfill” means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, or an underground mine or cave.

(6) “Land treatment facility” means a treatment facility or part of a treatment facility at which hazardous waste is applied onto or incorporated into the soil surface. If waste will remain after closure, a facility described in this subsection is a disposal facility.

(7) “Limited storage facility” means a storage facility that meets all of the following conditions:

(a) Has a maximum storage capacity that does not exceed 25,000 gallons of hazardous waste.

(b) Storage occurs only in tanks or containers.

(c) Has not more than 200 containers on site that have a capacity of 55 gallons or less.

(d) Does not store hazardous waste on site for more than 90 days.

(e) Does not receive hazardous waste from a treatment, storage, or disposal facility.

(8) “Manifest” means a form approved by the department used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(9) “Manifest system” means the system used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(10) “Mechanism” means a letter of credit, a financial test that demonstrates the financial strength of the company owning a treatment, storage, or disposal facility or a parent company guaranteeing financial assurance for a subsidiary, or an insurance policy that will provide funds for closure or postclosure care of a treatment, storage, or disposal facility.

(11) “Municipal solid waste incinerator” means an incinerator that is owned or operated by any person, and that meets all of the following requirements:

(a) The incinerator receives solid waste from off site and burns only household waste from single and multiple dwellings, hotels, motels, and other residential sources, or burns this household waste together with solid waste from commercial, institutional, municipal, county, or industrial sources that, if disposed of, would not be required to be placed in a disposal facility licensed under this part.

(b) The incinerator has established contractual requirements or other notification or inspection procedures sufficient to assure that the incinerator receives and burns only waste referred to in subdivision (a).

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(c) The incinerator meets the requirements of this part and the rules promulgated under this part.

(d) The incinerator is not an industrial furnace as defined in 40 C.F.R. 260.10.

(12) "Municipal solid waste incinerator ash" means the substances remaining after combustion in a municipal solid waste incinerator.

(13) "Municipality" means a city, village, township, or Indian tribe.

(14) "On site" means on the same or geographically contiguous property that may be divided by a public or private right-of-way if the entrance and exit between the pieces of property are at a crossroads intersection and access is by crossing rather than going along the right-of-way. On site property includes noncontiguous pieces of property owned by the same person but connected by a right-of-way that the owner controls and to which the public does not have access.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11104 Definitions; O to V.

Sec. 11104. (1) "Operator" means the person responsible for the overall operation of a disposal, treatment, or storage facility with approval of the department either by contract or license.

(2) "Site identification number" means a number that is assigned by the United States environmental protection agency or the United States environmental protection agency's designee to each generator, each transporter, and each treatment, storage, or disposal facility. If the generator or transporter or the treatment, storage, or disposal facility manages wastes that are hazardous under this part and the rules promulgated under this part but are not hazardous under the solid waste disposal act, site identification number means an equivalent number that is assigned by the department.

(3) "Solid waste" means that term as it is defined in part 115.

(4) "Storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

(5) "Storage facility" means a facility or part of a facility where managed hazardous waste, as defined by rule, is subject to storage. A generator who accumulates managed hazardous waste, as defined by rule, on site in containers or tanks for less than 91 days or a period of time prescribed by rule is not a storage facility.

(6) "Surface impoundment" or "impoundment" means a treatment, storage, or disposal facility or part of a treatment, storage, or disposal facility that is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials, although it may be lined with human-made materials, that is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and that is not an injection well. Surface impoundments include, but are not limited to, holding, storage, settling, and aeration pits, ponds, and lagoons.

(7) "The solid waste disposal act" means title II of Public Law 89-272, 42 U.S.C. 6901, 6902 to 6907, 6911, 6912 to 6914a, 6915 to 6916, 6921 to 6939e, 6941, 6942 to 6949a, 6951 to 6956, 6961 to 6964, 6971 to 6979b, 6981 to 6987, 6991 to 6991i, and 6992 to 6992k.

(8) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway, or water.

(9) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste, to neutralize the waste, to recover energy or material resources from the waste, or to render the waste nonhazardous or less hazardous, safer to transport, store, or dispose of, amenable to recovery, amenable to storage, or reduced in volume. Treatment includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(10) "Treatment facility" means a facility or part of a facility where managed hazardous waste, as defined by rule, is subject to treatment.

(11) "Updated plan" means the updated state hazardous waste management plan prepared under section 11110.

(12) "Vehicle" means a transport vehicle as defined in 49 C.F.R. 171.8.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan

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Compiled Laws.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11105 Generation, disposition, storage, treatment, or transportation of hazardous waste.

Sec. 11105. A person shall not generate, dispose, store, treat, or transport hazardous waste in this state without complying with the requirements of this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11105a Repealed. 2006, Act 560, Eff. Dec. 29, 2008.

Compiler's note: The repealed section pertained to adoption by reference of federal rules and promulgation of administrative rule.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11106 Municipal solid waste incinerator ash; regulation.

Sec. 11106. The generation, transportation, treatment, storage, disposal, reuse, and recycling of municipal solid waste incinerator ash is regulated under part 115, and not under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11107 Methods of hazardous waste management; assistance.

Sec. 11107. The department, in the conduct of its duties as prescribed under this part, shall assist in encouraging, developing, and implementing methods of hazardous waste management that are environmentally sound, that maximize the utilization of valuable resources, that encourage resource conservation, including source separation, recycling, and waste reduction, and that are consistent with the plan to be provided by the department pursuant to section 12103(1)(d) of the public health code, 1978 PA 368, MCL 333.12103. In addition, the department, in the conduct of its duties as prescribed by this part, shall assist in implementing the policy of this state to minimize the placement of untreated hazardous waste in disposal facilities.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2010, Act 357, Imd. Eff. Dec. 22, 2010.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11108 Landfill or solidification facility; payment of fee by owner or operator; certain hazardous waste exempt from fees; certification; evaluating accuracy of generator fee exemption certifications; enforcement action; forwarding fee revenue and completed form; reduction in hazardous waste generated or disposed; refund; disposition of fees; environmental pollution prevention fund.

Sec. 11108. (1) Except as otherwise provided in this section, each owner or operator of a landfill shall pay to the department a fee assessed on hazardous waste disposed of in the landfill. The fee shall be based on the quantity of hazardous waste specified on the manifest or monthly operating report and shall be $10.00 per ton,

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$10.00 per cubic yard, or 1/2 cent per pound depending on the unit of measure used by the owner or operator to calculate the fee. The fee for fractional quantities of hazardous waste shall be proportional. If the hazardous waste is required to be listed on a manifest and the owner or operator of the landfill determines that the hazardous waste quantity on the manifest is not accurate, the owner or operator shall correct the hazardous waste quantity on all manifest copies accompanying the shipment, note the reason for the change in the discrepancy indication space on the manifest, and assess the fee in accordance with the corrected hazardous waste quantity. Payment shall be made within 30 days after the close of each quarter. The landfill owner or operator shall assess off-site generators the fee. The fee for hazardous waste that is generated and disposed of on the site of a landfill owner or operator shall be paid by that owner or operator.

(2) Except as otherwise provided in this section, each owner or operator of a solidification facility licensed pursuant to section 11123 shall pay to the department a fee assessed on hazardous waste received at the solidification facility. The fee shall be based on the quantity of hazardous waste specified on the manifest or monthly operating report and shall be $10.00 per ton, $10.00 per cubic yard, 4 cents per gallon, or 1/2 cent per pound depending on the unit of measure used by the owner or operator to calculate the fee. The fee for fractional quantities of hazardous waste shall be proportional. If the hazardous waste is required to be listed on a manifest and the owner or operator of the solidification facility determines that the hazardous waste quantity on the manifest is not accurate, the owner or operator shall correct the hazardous waste quantity on all manifest copies accompanying the shipment, note the reason for the change in the discrepancy indication space on the manifest, and assess the fee in accordance with the corrected hazardous waste quantity. Payment shall be made within 30 days after the close of each quarter. The solidification facility owner or operator shall assess off-site generators the fee. The fee for hazardous waste that is generated and solidified on the site of a solidification owner or operator shall be paid by that owner or operator.

(3) The following hazardous waste is exempt from the fees provided for in this section:

(a) Ash that results from the incineration of hazardous waste or the incineration of solid waste as defined in part 115.

(b) Hazardous waste exempted by rule because of its character or the treatment it has received.

(c) Hazardous waste that is removed as part of a site cleanup activity at the expense of this state or the federal government.

(d) Solidified hazardous waste produced by a solidification facility licensed pursuant to section 11123 and destined for land disposal.

(e) Hazardous waste generated pursuant to a 1-time closure or site cleanup activity in this state if the closure or cleanup activity has been authorized in writing by the department. Hazardous waste resulting from the cleanup of inadvertent releases which occur after March 30, 1988 is not exempt from the fees.

(f) Primary and secondary wastewater treatment solids from a wastewater treatment plant that includes an aggressive biological treatment facility as defined in 42 USC 6925.

(g) Emission control dust or sludge from the primary production of steel in electric furnaces.

(4) An owner or operator of a landfill or solidification facility shall assess or pay the fee described in this section unless the generator provides a signed written certification indicating that the hazardous waste is exempt from the fee. If the hazardous waste that is exempt from the fee is required to be listed on a manifest, the certification shall contain the manifest number of the shipment and the specific fee exemption for which the hazardous waste qualifies. If the hazardous waste that is exempt from the fee is not required to be listed on a manifest, the certification shall provide the volume of exempt hazardous waste, the waste code or waste codes of the exempt waste, the date of disposal or solidification, and the specific fee exemption for which the hazardous waste qualifies. The owner or operator of the landfill or solidification facility shall retain this certification for 4 years from the date of receipt.

(5) The department or a health department certified pursuant to section 11145 shall evaluate the accuracy of generator fee exemption certifications and shall take enforcement action against a generator who files a false certification. In addition, the department shall take enforcement action to collect fees that are not paid as required by this section.

(6) The landfill owner or operator and the solidification facility owner or operator shall forward to the department the fee revenue due under this section with a completed form that is provided or approved by the department. The owner or operator shall certify that all information provided in the form is accurate. The form shall include the following information:

(a) The volume of hazardous waste subject to a fee.

(b) The name of each generator who was assessed a fee, the generator's identification number, manifest numbers, hazardous waste volumes, and the amount of the fee assessed.

(7) A generator is eligible for a refund from this state of fees paid under this section if the generator documents to the department, on a form provided by the department, a reduction in the amount of hazardous

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waste generated as a result of a process change, or a reduction in the amount of hazardous waste disposed of in a landfill, either directly or following solidification at a solidification facility, as a result of a process change or the generator's increased use of source separation, input substitution, process reformulation, recycling, treatment, or an exchange of hazardous waste that results in a utilization of that hazardous waste. The refund shall be in the amount of $10.00 per ton, $10.00 per cubic yard, 4 cents per gallon, or 1/2 cent per pound of reduction in the amount of hazardous waste generated or disposed of in a landfill. A generator is not eligible to receive a refund for that portion of a reduction in the amount of hazardous waste generated that is attributable to a decrease in the generator's level of production of the products that resulted in the generation of the hazardous waste.

(8) A generator seeking a refund under subsection (7) shall calculate the refund due by comparing hazardous waste generation, treatment, and disposal activity in the calendar year immediately preceding the date of filing with hazardous waste generation, treatment, and disposal activity in the calendar year 2 years prior to the date of filing. To be eligible for a refund, a generator shall file a request with the department by June 30 of the year following the year for which the refund is being claimed. A refund shall not exceed the total fees paid by the generator to the landfill operator or owner and the solidification facility operator or owner. A form submitted by the generator as provided for in subsection (7) shall be certified by the generator or the generator's authorized agent.

(9) The department shall maintain information regarding the landfill disposal fees received and refunds provided under this section.

(10) The fees collected under this section shall be forwarded to the state treasurer and deposited in the environmental pollution prevention fund created in section 11130. Any balance in the waste reduction fund on October 1, 2013 shall not lapse to the general fund but shall be transferred to the environmental pollution prevention fund and the waste reduction fund shall be closed. Money from the environmental pollution prevention fund shall be expended, upon appropriation, only for 1 or more of the following purposes:

(a) To pay refunds to generators under this section.

(b) To fund programs created under this part, part 143, part 145, or the hazardous materials transportation act, 1998 PA 138, MCL 29.471 to 29.480.

(c) Not more than $500,000.00 to implement section 3103a.

(d) To fund the permit to install program established under section 5505.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2011, Act 150, Imd. Eff. Sept. 21, 2011;—Am. 2013, Act 73, Eff. Oct. 1, 2013.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11110 State hazardous waste management plan; preparation; contents; studies; incentives; criteria; notice; news release; public hearings; comments; amendments.

Sec. 11110. (1) Not later than January 1, 1990, the department shall prepare an updated state hazardous waste management plan.

(2) The updated plan shall:

(a) Update the state hazardous waste management plan adopted by the commission on January 15, 1982.

(b) Be based upon location of generators, health and safety, economics of transporting, type of waste, and existing treatment, storage, or disposal facilities.

(c) Include information generated by the department of commerce and the department on hazardous waste capacity needs in the state.

(d) Include information provided by the office of waste reduction created in part 143.

(e) Plan for the availability of hazardous waste treatment or disposal facilities that have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the state during the 20-year period after October 1, 1988, as is described in section 104(c)(9)(A) of title I of the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 42 U.S.C. 9604.

(f) Plan for a reasonable geographic distribution of treatment, storage, and disposal facilities to meet existing and future needs, including proposing criteria for determining acceptable locations for these facilities. The criteria shall include a consideration of a location's geology, geography, demography, waste generation patterns, along with environmental factors, public health factors, and other relevant characteristics as determined by the department.

(g) Emphasize a shift away from the practice of landfilling hazardous waste and toward the in-plant

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reduction of hazardous waste and the recycling and treatment of hazardous waste.

(h) Include necessary legislative, administrative, and economic mechanisms, and a timetable to carry out the plan.

(3) The department shall instruct the office of waste reduction created in part 143 to complete studies as considered necessary for the completion of the updated plan. The studies may include:

(a) An inventory and evaluation of the sources of hazardous waste generation within this state or from other states, including the types, quantities, and chemical and physical characteristics of the hazardous waste.

(b) An inventory and evaluation of current hazardous waste management, minimization, or reduction practices and costs, including treatment, disposal, on-site recycling, reclamation, and other forms of source reduction within this state.

(c) A projection or determination of future hazardous waste management needs based on an evaluation of existing capacities, treatment or disposal capabilities, manufacturing activity, limitations, and constraints. Projection of needs shall consider the types and sizes of treatment, storage, or disposal facilities, general locations within the state, management control systems, and an identified need for a state owned treatment, storage, or disposal facility.

(d) An investigation and analysis of methods, incentives, or technologies for source reduction, reuse, recycling, or recovery of potentially hazardous waste and a strategy for encouraging the utilization or reduction of hazardous waste.

(e) An investigation and analysis of methods and incentives to encourage interstate and international cooperation in the management of hazardous waste.

(f) An estimate of the public and private cost of treating, storing, or disposing of hazardous waste.

(g) An investigation and analysis of alternate methods for treatment and disposal of hazardous waste.

(4) If the department finds in preparing the updated plan that there is a need for additional treatment or disposal facilities in the state, then the department shall identify incentives the state could offer that would encourage the construction and operation of additional treatment or disposal facilities in the state that are consistent with the updated plan. The department shall propose criteria which could be used in evaluating applicants for the incentives.

(5) Upon completion of the updated plan, the department shall publish a notice in a number of newspapers having major circulation within the state as determined by the department and shall issue a statewide news release announcing the availability of the updated plan for inspection or purchase at cost by interested persons. The announcement shall indicate where and how the updated plan may be obtained or reviewed and shall indicate that not less than 6 public hearings shall be conducted at varying locations in the state before formal adoption. The first public hearing shall not be held until 60 days have elapsed from the date of the notice announcing the availability of the updated plan. The remaining public hearings shall be held within 120 days after the first public hearing at approximately equal time intervals.

(6) After the public hearings, the department shall prepare a written summary of the comments received, provide comments on the major concerns raised, make amendments to the updated plan, and determine whether the updated plan should be adopted.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11111 State hazardous waste management plan; adoption or rejection; reason for rejection; return of plan; changing and reconsidering plan.

Sec. 11111. (1) The department, with the advice of the director of public health, shall adopt or reject the updated plan within 60 days.

(2) If the department rejects the updated plan, it shall indicate its reason for rejection and return the updated plan for further work.

(3) The department shall make the necessary changes and reconsider the updated plan within 30 days after receipt of the rejection.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11112 State hazardous waste management plan; final decision; adoption.

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Sec. 11112. The department shall make a final decision on the updated plan within 120 days after the department first receives the updated plan. If the department fails to formally adopt or reject the updated plan within 120 days, the updated plan is considered adopted.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11114 Proposed rules to implement plan.

Sec. 11114. Not more than 180 days after the final adoption of the updated plan, the department shall submit to the legislature proposed rules to implement the updated plan created in section 11110.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11115 Permits and licenses for treatment, storage, or disposal facility; determination; exception.

Sec. 11115. After the updated plan is adopted, the department shall not issue a permit or license under this part for a treatment, storage, or disposal facility until the department has made a determination that the action is consistent with the updated plan. This section does not apply to a treatment, storage, or disposal facility granted a construction permit or a license under this part before the final adoption of the updated plan. However, such a facility shall be consistent with the state hazardous waste management plan adopted by the commission on January 15, 1982.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11115a Facility subject to corrective action requirements; release of contaminant from waste management unit or release of hazardous waste from facility; determination by department; consent order; license, permit, or order; contents.

Sec. 11115a. (1) Beginning on June 4, 1992, the owner or operator, or both, of a facility specified in this subsection is subject to the corrective action requirements specified in this part and the rules promulgated under this part for all releases of a contaminant from any waste management unit at the facility, regardless of when the contaminant may have been placed in or released from the waste management unit. This requirement applies to a facility for which the owner or operator, or both, is applying for or has been issued a license under this part.

(2) Beginning on June 4, 1992, if the department, on the basis of any information, determines that there is or has been a release of a contaminant from any waste management unit at the facility, the department may order, or may enter a consent order with an owner or operator, or both, of a facility specified in subsection (1), requiring corrective action at the facility. A license, permit, or order issued or entered pursuant to this subsection shall contain all of the following:

(a) Schedules of compliance for corrective action if corrective action cannot be completed before the issuance of the license, permit, or order.

(b) Assurances of financial responsibility for completing the corrective action.

(c) Requirements that corrective action be taken beyond the facility boundary if the release of a contaminant has or may have migrated or otherwise has or may have been emitted beyond the facility boundary, unless the owner or operator of the facility demonstrates to the satisfaction of the department that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake this corrective action.

(3) Beginning on June 4, 1992, the owner or operator, or both, of a facility specified in this subsection and not in subsection (1) is subject to the corrective action requirements specified in this part and the rules promulgated under this part for all releases of a hazardous waste from the facility, regardless of when the hazardous waste may have been placed in or released from the facility. This requirement applies to a facility for which the owner or operator, or both, is or was subject to the interim status requirements defined in the solid waste disposal act, except for those facilities that have received formal written approval of the

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withdrawal of their United States environmental protection agency part A hazardous waste permit application from the department or the United States environmental protection agency.

(4) Beginning on June 4, 1992, if the department, on the basis of any information, determines that there is or has been a release of a hazardous waste, the department may order, or may enter a consent order with, an owner or operator, or both, of a facility specified in subsection (3), requiring corrective action at the facility. An order issued or entered pursuant to this subsection shall contain both of the following:

(a) Schedules of compliance for corrective action.

(b) Assurances of financial responsibility for completing the corrective action.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

Administrative rules: R 299.9101 et seq. of the Michigan Administrative Code.

324.11115b Corrective actions; satisfaction of remedial action obligations.

Sec. 11115b. Corrective actions conducted pursuant to this part satisfy a person's remedial action obligations under part 201 and remedial obligations under part 31 for that release or threat of release.

History: Add. 1995, Act 37, Imd. Eff. May 17, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11116-324.11118 Repealed. 2010, Act 357, Imd. Eff. Dec. 22, 2010.

Compiler's note: The repealed sections pertained to requirements for applications for construction permits.

324.11118a Multisource commercial hazardous waste disposal well; definition; maintenance of treatment and storage facility; operating license required; business plan; applicability of subsection (3).

Sec. 11118a. (1) As used in this section, "multisource commercial hazardous waste disposal well" has the meaning ascribed to that term in section 62506a.

(2) A multisource commercial hazardous waste disposal well shall maintain on site a treatment facility and a storage facility that have obtained an operating license under section 11123.

(3) Subject to subsection (4), in addition to the information required under section 11123, the owner or operator of a proposed treatment and storage facility with a multisource commercial hazardous waste disposal well shall provide to the department in an application for an operating license a business plan for the well operations. The business plan shall contain all of the following information:

(a) The type, estimated quantities, and expected potential sources of wastes to be disposed of in the well.

(b) A feasibility study on the viability of the disposal well operations.

(c) Additional business plan information required by the department and related solely to the requirements of subdivisions (a) and (b).

(d) Any additional business plan information if the department and applicant agree that such additional information should be submitted.

(4) Subsection (3) applies only to a person who submits an application for an operating license, other than a renewal operating license, after the effective date of the 2010 amendatory act that added this subsection.

History: Add. 1996, Act 182, Imd. Eff. May 3, 1996;—Am. 2010, Act 357, Imd. Eff. Dec. 22, 2010.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11119, 324.11120 Repealed. 2010, Act 357, Imd. Eff. Dec. 22, 2010.

Compiler's note: The repealed sections pertained to duties of department upon receipt of construction permit application and notification of affected municipalities and counties.

324.11121 Effect of local ordinance, permit requirement, or other requirement.

Sec. 11121. A local ordinance, permit requirement, or other requirement does not prohibit the construction of a treatment, storage, or disposal facility, except as otherwise provided in section 11123.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2010, Act 357, Imd. Eff. Dec. 22, 2010.

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Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11122 Repealed. 2010, Act 357, Imd. Eff. Dec. 22, 2010.

Compiler's note: The repealed section pertained to establishment of limited storage facility.

324.11123 Operating license; contents of applications; schedule for submitting operating license application; time period for submitting complete operating license application; conditions for operating storage facility until application approved or denied; placement on department-organized mailing list; fee.

Sec. 11123. (1) Unless a person is complying with subsection (8) or a rule promulgated under section 11127(4), a person shall not establish, construct, conduct, manage, maintain, or operate a treatment, storage, or disposal facility within this state without an operating license from the department.

(2) An application for an operating license for a proposed treatment, storage, or disposal facility or the expansion, enlargement, or alteration of a treatment, storage, or disposal facility beyond its original authorized design capacity or beyond the area specified in an existing operating license, original construction permit, or other authorization shall be submitted on a form provided by the department and contain all of the following:

(a) The name and residence of the applicant.

(b) The location of the proposed treatment, storage, or disposal facility project.

(c) A copy of an actual published notice that the applicant published at least 30 days before submittal of the application in a newspaper having major circulation in the municipality and the immediate vicinity of the proposed treatment, storage, or disposal facility project. The notice shall contain a map indicating the location of the proposed treatment, storage, or disposal facility project and information on the nature and size of the proposed facility. In addition, as provided by the department, the notice shall contain a description of the application review process, the location where the complete application may be reviewed, and an explanation of how copies of the complete application may be obtained.

(d) A written summary of the comments received at the public preapplication meeting required by rule and the applicant's response to the comments, including any revisions to the application.

(e) A determination of existing hydrogeological characteristics specified in a hydrogeological report and monitoring program consistent with rules promulgated under this part.

(f) An environmental assessment. The environmental assessment shall include, at a minimum, an evaluation of the proposed facility's impact on the air, water, and other natural resources of this state, and also shall contain an environmental failure mode assessment.

(g) The procedures for closure and postclosure monitoring.

(h) An engineering plan.

(i) Other information specified by rule or by federal regulation issued under the solid waste disposal act.

(j) An application fee. The application fee shall be deposited in the environmental pollution prevention fund created in section 11130. Pursuant to procedures established by rule, the application fee shall be $25,000.00 plus all of the following, as applicable:

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(i)For a landfill, surface impoundment,

   land treatment, or waste pile

   facility................................ $ 9,000.00
(ii
)  For an incinerator or treatment

   facility other than a treatment facility

   described in subparagraph (i)............. $ 7,200.00
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(*iii*) For a storage facility, other than storage that is associated with treatment or disposal activities that may be regulated under a single license.. $ 500.00

(k) Except as otherwise provided in this subdivision, a disclosure statement that includes all of the following:

(*i*) The full name and business address of all of the following:

(A) The applicant.

(B) The 5 persons holding the largest shares of the equity in or debt liability of the proposed facility. The department may waive all or any portion of this requirement for an applicant that is a corporation with publicly traded stock.

(C) The operator. If a waiver is obtained under sub-subparagraph (B), detailed information regarding the proposed operator shall be included in the disclosure statement.

(D) If known, the 3 employees of the operator who will have the most responsibility for the day-to-day operation of the facility, including their previous experience with other hazardous waste treatment, storage, or disposal facilities.

(E) Any other partnership, corporation, association, or other legal entity if any person required to be listed under sub-subparagraphs (A) to (D) has at any time had 25% or more of the equity in or debt liability of that legal entity. The department may waive all or any portion of this requirement for an applicant that is a corporation with publicly traded stock.

(*ii*) For each person required to be listed under this subdivision, a list of all convictions for criminal violations of any statute enacted by a federal, state, Canadian, or Canadian provincial agency if the statute is an environmental statute, if the violation was a misdemeanor committed in furtherance of obtaining an operating license under this part not more than 5 years before the application is filed, or if the violation was a felony committed in furtherance of obtaining an operating license under this part not more than 10 years before the application is filed. If debt liability is held by a chartered lending institution, information required in this subparagraph and subparagraphs (*iii*) and (*iv*) is not required from that institution. The department shall submit to the legislature a report on the 2014 act that amended this subparagraph, including the number of permits denied as a result of that act and whether this subparagraph should be further amended. The report shall cover the 5-year period after the effective date of that act and shall be submitted within 60 days after the expiration of that 5-year period. The report may be submitted electronically.

(*iii*) A list of all environmental permits or licenses issued by a federal, state, local, Canadian, or Canadian provincial agency held by each person required to be listed under this subdivision that were permanently revoked because of noncompliance.

(*iv*) A list of all activities at property owned or operated by each person required to be listed under this subdivision that resulted in a threat or potential threat to the environment and for which public funds were used to finance an activity to mitigate the threat or potential threat to the environment, except if the public funds expended to facilitate the mitigation of environmental contamination were voluntarily and expeditiously recovered from the applicant or other listed person without litigation.

(*l*) A demonstration that the applicant has considered each of the following:

(*i*) The risk and impact of accident during the transportation of hazardous waste to the treatment, storage, or disposal facility.

(*ii*) The risk and impact of fires or explosions from improper treatment, storage, and disposal methods at the treatment, storage, or disposal facility.

(*iii*) The impact on the municipality where the proposed treatment, storage, or disposal facility is to be located in terms of health, safety, cost, and consistency with local planning and existing development, including proximity to housing, schools, and public facilities.

(*iv*) The nature of the probable environmental impact, including the specification of the predictable adverse effects on each of the following:

(A) The natural environment and ecology.

(B) Public health and safety.

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(C) Scenic, historic, cultural, and recreational values.

(D) Water and air quality and wildlife.

(m) A summary of measures evaluated to mitigate the impacts identified in subdivision (*l*) and a detailed description of the measures to be implemented by the applicant.

(n) A schedule for submittal of all of the following postconstruction documentation:

(*i*) Any changes in, or additions to, the previously submitted disclosure information, or a certification that the disclosure listings previously submitted continue to be correct, following completion of construction of the treatment, storage, or disposal facility.

(*ii*) A certification under the seal of a licensed professional engineer verifying that the construction of the treatment, storage, or disposal facility has proceeded according to the plans approved by the department and, if applicable, the approved construction permit, including as-built plans.

(*iii*) A certification of the treatment, storage, or disposal facility's capability of treating, storing, or disposing of hazardous waste in compliance with this part.

(*iv*) Proof of financial assurance as required by rule.

(3) If any information required to be included in the disclosure statement under subsection (2)(k) changes or is supplemented after the filing of the statement, the applicant or licensee shall provide that information to the department in writing not later than 30 days after the change or addition.

(4) Notwithstanding any other provision of law, the department may deny an application for an operating license if there are any listings pursuant to subsection (2)(k)(*ii*), (*iii*), or (*iv*) as originally disclosed or as supplemented.

(5) The application for an operating license for a proposed limited storage facility, which is subject to the requirements pertaining to storage facilities, shall be submitted on a form provided by the department and contain all of the following:

(a) The name and residence of the applicant.

(b) The location of the proposed facility.

(c) A determination of existing hydrogeological characteristics specified in a hydrogeological report and monitoring program consistent with rules promulgated under this part.

(d) An environmental assessment. The environmental assessment shall include, at a minimum, an evaluation of the proposed facility's impact on the air, water, and other natural resources of this state, and also shall contain an environmental failure mode assessment.

(e) The procedures for closure.

(f) An engineering plan.

(g) Proof of financial responsibility.

(h) A resolution or other formal determination of the governing body of each municipality in which the proposed limited storage facility would be located indicating that the limited storage facility is compatible with the zoning ordinance of that municipality, if any. However, in the absence of a resolution or other formal determination, the application shall include a copy of a registered letter sent to the municipality at least 60 days before the application submittal, indicating the intent to construct a limited storage facility, and requesting a formal determination on whether the proposed facility is compatible with the zoning ordinance of that municipality, if any, in effect on the date the letter is received, and indicating that failure to pass a resolution or make a formal determination within 60 days of receipt of the letter means that the proposed facility is to be considered compatible with any applicable zoning ordinance. If, within 60 days of receiving a registered letter, a municipality does not make a formal determination concerning whether a proposed limited storage facility is compatible with a zoning ordinance of that municipality as in effect on the date the letter is received, the limited storage facility is considered compatible with any zoning ordinance of that municipality, and incompatibility with a zoning ordinance of that municipality is not a basis for the department to deny the license.

(i) An application fee of $500.00. The application fee shall be deposited in the environmental pollution prevention fund created in section 11130.

(j) Other information specified by rule or by federal regulation issued under the solid waste disposal act.

(6) The application for an operating license for a treatment, storage, or disposal facility other than a facility identified in subsection (2) or (5) shall be made on a form provided by the department and include all of the following:

(a) The name and residence of the applicant.

(b) The location of the existing treatment, storage, or disposal facility.

(c) Other information considered necessary by the department or specified in this section, by rule, or by federal regulation issued under the solid waste disposal act.

(d) Proof of financial responsibility. An applicant for an operating license for a treatment, storage, or

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disposal facility that is a surface impoundment, landfill, or land treatment facility shall demonstrate financial responsibility for claims arising from nonsudden and accidental occurrences relating to the operation of the facility that cause injury to persons or property.

(e) A fee of $500.00. The fee shall be deposited in the environmental pollution prevention fund created in section 11130.

(7) The department shall establish a schedule for requiring each person subject to subsection (8) to submit an operating license application. The department may adjust this schedule as necessary. Each person subject to subsection (8) shall submit a complete operating license application within 180 days of the date requested to do so by the department.

(8) A person who owns or operates a treatment, storage, or disposal facility that is in existence on the effective date of an amendment of this part or of a rule promulgated under this part that renders all or portions of the facility subject to the operating license requirements of this section may continue to operate the facility or portions of the facility that are subject to the operating license requirements until an operating license application is approved or denied if all of the following conditions have been met:

(a) A complete operating license application is submitted within 180 days of the date requested by the department under subsection (7).

(b) The person is in compliance with all rules promulgated under this part and with all other state laws.

(c) The person qualifies for interim status as defined in the solid waste disposal act, is in compliance with interim status standards established by federal regulation under subtitle C of the solid waste disposal act, 42 USC 6921 to 6939e, and has not had interim status terminated.

(9) A person may request to be placed on a department-organized mailing list to be kept informed of any rules, plans, operating license applications, contested case hearings, public hearings, or other information or procedures relating to the administration of this part. The department may charge a fee to cover the cost of the materials.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2010, Act 357, Imd. Eff. Dec. 22, 2010;—Am. 2014, Act 254, Imd. Eff. June 30, 2014.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

Administrative rules: R 299.9101 et seq. of the Michigan Administrative Code.

324.11124 Inspection of site; determination of compliance; filing and review of inspection report.

Sec. 11124. (1) Following the construction of the proposed treatment, storage, or disposal facility or the expansion, enlargement, or alteration of a treatment, storage, or disposal facility beyond its original authorized design capacity or beyond the area specified in an existing operating license, original construction permit, or other authorization, and the receipt of the postconstruction documentation required under section 11123, the department shall inspect the site and determine if the proposed treatment, storage, or disposal facility complies with this part, the rules promulgated under this part, and the stipulations included in the approved treatment, storage, or disposal facility operating license. An inspection report shall be filed in writing by the department before issuing final authorization to manage, maintain, and operate the treatment, storage, or disposal facility and shall be made available for public review.

(2) Upon receipt of an operating license application meeting the requirements of section 11123(6), the department shall inspect the site and determine if the treatment, storage, or disposal facility complies with this part and the rules promulgated under this part. An inspection report shall be filed in writing by the department before issuing an operating license.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2010, Act 357, Imd. Eff. Dec. 22, 2010.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11125 Duties of department upon receipt of operating license application; establishment of operating license condition; final decision on operating license application; public hearing; notice; time; extension of deadline; stipulations; operation not prohibited by local ordinance, permit, or other requirement; changes or additions to disclosure statement; denial of application; modification or revocation of operating license; conditions; postconstruction documentation.

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Sec. 11125. (1) Upon receipt of an operating license application that complies with the requirements of section 11123(2), the department shall do all of the following:

(a) Notify the municipality and county in which the treatment, storage, or disposal facility is located or proposed to be located; a local soil erosion and sedimentation control agency appointed pursuant to part 91; each division within the department that has responsibility in land, air, or water management; a regional planning agency established by executive directive of the governor; and other appropriate agencies. The notice shall describe the procedure by which the license may be approved or denied.

(b) Review the plans of the proposed treatment, storage, or disposal facility to determine if the proposed operation complies with this part and the rules promulgated under this part. The review shall be made within the department. The review shall include, but need not be limited to, a review of air quality, water quality, waste management, hydrogeology, and the applicant's disclosure statement. A written and signed review by each person within the department reviewing the application and plans shall be received and filed in the department's license application records before an operating license is issued or denied by the department.

(c) Integrate the relevant provisions of all permits that the applicant is required to obtain from the department to construct the proposed treatment, storage, or disposal facility into the operating license required by this part.

(d) Consider the mitigation measures proposed to be implemented as identified in section 11123(2)(m).

(e) Hold a public hearing not more than 60 days after receipt of the application.

(2) The department may establish operating license conditions specifically applicable to the treatment, storage, or disposal facility and operation at that site to mitigate adverse impacts.

(3) The department shall provide notice and an opportunity for a public hearing before making a final decision on an operating license application.

(4) The department shall make a final decision on an operating license application within 140 days after the department receives a complete application. However, if the state's hazardous waste management program is authorized by the United States environmental protection agency under section 3006 of subtitle C of the solid waste disposal act, 42 USC 6926, the department may extend the deadline beyond the limitation provided in this section in order to fulfill the public participation requirements of the solid waste disposal act. The operating license may contain stipulations specifically applicable to site and operation.

(5) A local ordinance, permit, or other requirement shall not prohibit the operation of a licensed treatment, storage, or disposal facility.

(6) If any information required to be included in the disclosure statement required under section 11123 changes or is supplemented after the filing of the statement, the applicant or licensee shall provide that information to the department in writing within 30 days after the change or addition.

(7) The department may deny an operating license application submitted pursuant to section 11123 if any information described in section 11123(2)(k)(*ii*) to (*iv*) was not disclosed as required in section 11123(2) or this section.

(8) The department shall provide notice of the final decision to persons on the organized mailing list for the facility.

(9) Following the construction of a new, expanded, enlarged, or altered treatment, storage, or disposal facility, the department shall review all information required to be submitted by the operating license. If the department finds that the owner or operator has deviated from the specific conditions established in the operating license, the department shall determine if cause exists for modification or revocation of the operating license, in accordance with provisions established by rule. At a minimum, the postconstruction documentation shall include all of the following:

(a) Updated disclosure information or a certification as described in section 11123(2)(n)(*i*).

(b) A certification of construction as described in section 11123(2)(n)(*ii*). The department shall require additional certification periodically during the operation or in order to verify proper closure of the site.

(c) A certification of capability signed and sealed by a licensed professional engineer as described in section 11123(2)(n)(*iii*).

(d) Information regarding any deviations from the specific conditions in the operating license.

(e) Proof of financial responsibility.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2010, Act 357, Imd. Eff. Dec. 22, 2010.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11126 Coordinating and integrating provisions of act; extent.

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Sec. 11126. The department shall coordinate and integrate the provisions of this part for purposes of administration and enforcement with appropriate state and federal law including the clean air act, chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q; the federal water pollution control act, chapter 758, 86 Stat. 816, 33 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257, 1258 to 1263, 1265 to 1270, 1281, 1282 to 1293, 1294 to 1299, 1311 to 1313, 1314 to 1326, 1328 to 1330, 1341 to 1345, 1361 to 1377, and 1381 to 1387; title XIV of the public health service act, chapter 373, 88 Stat. 1660; the toxic substances control act, Public Law 94-469, 15 U.S.C. 2601 to 2629, 2641 to 2656, 2661 to 2671, and 2681 to 2692; the resource conservation and recovery act of 1976, 42 U.S.C. 6901 to 6987; parts 31, 55, 115, and 121; the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023; the fire prevention code, 1941 PA 207, MCL 29.1 to 29.34; and the hazardous materials transportation act. The coordination and integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11126a Fee schedule; report.

Sec. 11126a. By September 1, 1998, the department shall submit a report to the legislature that recommends a fee schedule to implement this part.

History: Add. 1998, Act 139, Eff. Sept. 1, 1998.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11127 Rules generally; exemption; effect of amendment to part or rules, or changes in definitions.

Sec. 11127. (1) The department shall submit to the legislature, after consultation with the department of public health, rules necessary to implement and administer this part. The rules required to be submitted by this subsection shall include, but not be limited to, requirements for generators, transporters, and treatment, storage, and disposal facilities.

(2) The department may promulgate rules that exempt certain hazardous wastes and certain treatment, storage, or disposal facilities from all or portions of the requirements of this part as necessary to obtain or maintain authorization from the United States environmental protection agency under the solid waste disposal act, or upon a determination by the department that a hazardous waste or a treatment, storage, or disposal facility is adequately regulated under other state or federal law and that scientific data supports a conclusion that an exemption will not result in an impairment of the department's ability to protect the public health and the environment. However, an exemption granted pursuant to this subsection shall not result in a level of regulation less stringent than that required under the solid waste disposal act.

(3) If an amendment to this part or the rules promulgated under this part subjects a person to a new or different licensing requirement of this part, the department shall promulgate rules to facilitate orderly and reasonable compliance by that person.

(4) Changes in the definition of hazardous waste contained in section 11103 and the definition of treatment contained in section 11104 effected by the 1982 amendatory act that amended former Act No. 64 of the Public Acts of 1979 do not eliminate any exemption provided to any hazardous waste or to any treatment, storage, or disposal facility under administrative rules promulgated under former Act No. 64 of the Public Acts of 1979 before March 30, 1983. However, these exemptions may be modified or eliminated by administrative rules promulgated after March 30, 1983 under former Act No. 64 of the Public Acts of 1979 or under this part in order that the state may obtain authorization from the United States environmental protection agency under the solid waste disposal act, or to provide adequate protection to the public health or the environment.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

Administrative rules: R 299.9101 et seq. of the Michigan Administrative Code.

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324.11128 Rules listing hazardous waste and other criteria; revision; removing certain materials from list; public hearings; construction of part, rules, and list.

Sec. 11128. (1) The department shall submit to the legislature proposed rules listing hazardous waste and other criteria as required by this part. The rules shall state the criteria for identifying the characteristics of hazardous waste and for listing the types of hazardous waste, taking into account toxicity, persistence, degradability in nature, potential for accumulation in tissue, and other related factors including flammability, corrosiveness, and other hazardous characteristics. The department shall revise by rule the criteria and listing as necessary. A rule promulgated for the purpose of removing from the list those materials removed from the federal list of regulated materials or removing from management as a hazardous waste those wastes that have been exempted from management under the solid waste disposal act are not required to meet the requirements of sections 41, 42, and 45(2) of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.241, 24.242, and 24.245 of the Michigan Compiled Laws.

(2) Before the department establishes the list, the department shall hold not less than 3 public hearings in different municipalities in the state. To ensure consistency between federal and state requirements, this part, the rules promulgated by the department, and the list shall be construed to conform as closely as possible to requirements established under the solid waste disposal act.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

Administrative rules: R 299.9101 et seq. of the Michigan Administrative Code.

324.11129 Information as public record; confidential information; notice of request for information; demonstration by person regulated; granting or denying request; certain data not confidential; release of confidential information.

Sec. 11129. (1) Except as provided in subsections (2) and (3), information obtained by the department under this part is a public record subject to disclosure as provided in the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(2) A person regulated under this part may designate a record, permit application, other information, or a portion of a record, permit application, or other information furnished to or obtained by the department or its agents as being only for the confidential use of the department. The department shall notify the regulated person of a request for public records under section 5 of the freedom of information act, 1976 PA 442, MCL 15.235, whose scope includes information designated as confidential. The person regulated under this part has 30 days after the receipt of the notice to demonstrate to the department that the information designated as confidential should not be disclosed because the information is a trade secret or secret process or is production, commercial, or financial information the disclosure of which would jeopardize the competitive position of the person from whom the information was obtained and make available information not otherwise publicly available. The department shall grant the request for the information unless the person regulated under this part makes a satisfactory demonstration to the department that the information should not be disclosed. If there is a dispute between the owner or operator of a treatment, storage, or disposal facility and the person requesting information under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, the director of the department shall make the decision to grant or deny the request. When the department makes a decision to grant a request, the information requested shall not be released until 3 days have elapsed after the decision is made.

(3) Data on the quantity or composition of hazardous waste generated, transported, treated, stored, or disposed of; air and water emission factors, rates and characterizations; emissions during malfunctions of equipment required under this part on treatment, storage, or disposal facilities; or the efficiency of air and water pollution control devices is not rendered as confidential information by this section.

(4) The department may release any information obtained under this part, including a record, permit application, or other information considered confidential pursuant to subsection (1), to the United States environmental protection agency, the United States agency for toxic substance disease registry, or other agency authorized to receive information, including confidential information, under the solid waste disposal act.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2010, Act 357, Imd. Eff. Dec. 22, 2010.

Popular name: Act 451

Popular name: Hazardous Waste Act

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Popular name: NREPA

324.11130 Environmental pollution prevention fund; creation; receipt and disposition of assets; investment; administration.

Sec. 11130. (1) The environmental pollution prevention fund is created in the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the environmental pollution prevention fund or into an account within the environmental pollution prevention fund. The state treasurer shall direct the investment of the environmental pollution prevention fund. The state treasurer shall credit to each account within the environmental pollution prevention fund interest and earnings from account investments.

(3) Money remaining in the environmental pollution prevention fund and in any account within the environmental pollution prevention fund at the close of the fiscal year shall not lapse to the general fund. The department shall be the administrator of the fund for auditing purposes.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2013, Act 73, Eff. Oct. 1, 2013.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

Administrative rules: R 299.9101 et seq. of the Michigan Administrative Code.

324.11132 Repealed. 1998, Act 139, Eff. Sept. 1, 1998.

Compiler's note: The repealed section pertained to requirements for hazardous waste transporter business license.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11132a Transporter; duties; inspection; establishment of standards and requirements by rule.

Sec. 11132a. (1) A transporter shall do all of the following:

(a) Obtain and utilize an environmental protection agency identification number in accordance with the rules promulgated under this part.

(b) If transporting by highway, register and be permitted in accordance with the hazardous materials transportation act and carry a copy of the registration and permit on the vehicle for inspection by the department, the department of state police, a peace officer, or a representative of the United States environmental protection agency.

(c) Comply with the transfer facility operating and financial responsibility requirements as required by the rules promulgated under this part.

(d) Comply with the consolidation and commingling requirements as required by the rules promulgated under this part.

(e) Comply with the vehicle requirements as required by the rules promulgated under this part.

(f) Utilize, complete, and retain a manifest for each shipment of hazardous waste as required by this part and the rules promulgated under this part.

(g) Keep all records readily available for review and inspection by the department, the department of state police, a peace officer, or a representative of the United States environmental protection agency.

(h) Retain all records as required by the rules promulgated under this part for a period of 3 years. The retention period required by this subdivision is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department.

(i) Comply with the reporting requirements as required by the rules promulgated under this part.

(j) Comply with the import and export requirements as required by the rules promulgated under this part.

(k) Comply with the requirements regarding hazardous waste discharges as required by the rules promulgated under this part.

(*l*) Comply with the land disposal restriction requirements as required by the rules promulgated under this part.

(m) Comply with the universal waste requirements as required by the rules promulgated under this part.

(n) Keep the outside of all vehicles and accessory equipment free of hazardous waste or hazardous waste constituents.

(2) The department may conduct an inspection to verify that the equipment, location, and methods of a transporter are adequate to effectuate service under this part and the rules promulgated under this part. The

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department shall establish, by rule, the inspection standards and requirements.

History: Add. 1998, Act 139, Eff. Sept. 1, 1998.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

Administrative rules: R 299.9101 et seq. of the Michigan Administrative Code.

324.11133 Hazardous waste transporter business license; revocation.

Sec. 11133. A hazardous waste transporter business license issued under this part shall be revoked if the holder of the license selected a treatment, storage, or disposal facility which is operated contrary to this part or the rules promulgated under this part or uses a vehicle to store, treat, transport, or dispose of hazardous waste contrary to this part or the rules promulgated under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11134 Municipality or county; prohibited conduct.

Sec. 11134. A municipality or county shall not prohibit the transportation of hazardous waste through the municipality or county or prevent the ingress and egress into a licensed treatment, storage, or disposal facility.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11135 Manifest; user charge; payment; violations; deposit of amounts in environmental pollution prevention fund; maintenance of information for reporting purposes; evaluation; report; contents; submission of copy to department; certification; specified destination; determining status of specified waste; exception report; retention period for copy of manifest; extension.

Sec. 11135. (1) A hazardous waste generator shall provide a separate manifest to the transporter for each load of hazardous waste transported to property that is not on the site where it was generated. Until October 1, 2017, a person required to prepare a manifest shall submit to the department a manifest processing user charge of $8.00 per manifest and his or her tax identification number. Money collected under this subsection shall be forwarded to the state treasurer for deposit into the environmental pollution prevention fund created in section 11130.

(2) Manifest processing user charges under subsection (1) shall be paid using a form provided by the department. The department shall send a form to each person subject to the manifest processing user charge by March 30 of each year. The form shall specify the number of manifests prepared by that person and processed by the department during the previous calendar year. A person subject to the manifest processing user charge shall return the completed form and the appropriate payment to the department by April 30 of each year.

(3) A person who fails to provide timely and accurate information, a complete form, or the appropriate manifest processing user charge as provided for in this section is in violation of this part and is subject to both of the following:

(a) Payment of the manifest processing user charge and an administrative fine of 5% of the amount owed for each month that the payment is delinquent. Any payments received after the fifteenth day of the month after the due date shall be considered delinquent for that month. However, the administrative fine shall not exceed 25% of the total amount owed.

(b) Beginning 5 months after the date payment of the manifest user charge is due, but not paid, at the request of the department, an action by the attorney general for the collection of the amount owed under subdivision (a) and the actual cost to the department in attempting to collect the amount owed under subdivision (a).

(4) Any amounts collected under subsection (3) for a violation of this section shall be forwarded to the state treasurer and deposited in the environmental pollution prevention fund created in section 11130.

(5) The department shall maintain information regarding the manifest processing user charges received under this section as necessary to satisfy the reporting requirements of subsection (6).

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(6) The department shall evaluate the effectiveness and adequacy of the manifest processing user charges collected under this section relative to the overall revenue needs of the state's hazardous waste management program administered under this part. Not later than April 1 of each even-numbered year, the department shall submit to the legislature a report summarizing its findings under this subsection.

(7) A generator shall include on the manifest details as specified by the department and shall at least include a sufficient qualitative and quantitative analysis and a physical description of the hazardous waste to evaluate toxicity and methods of transportation, storage, and disposal. The manifest also shall include safety precautions as necessary for each load of hazardous waste. The generator shall submit to the department a copy of the manifest within 10 days after the end of the month for each load of hazardous waste transported within that month.

(8) A generator shall certify that the information contained on a manifest prepared by the generator is accurate.

(9) The specified destination of each load of hazardous waste identified on the manifest shall be a designated facility.

(10) If a generator does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days after the date on which the hazardous waste was accepted by the initial transporter, the generator shall contact the transporter to determine the status of the hazardous waste. If the generator is unable to determine the status of the hazardous waste upon contacting the transporter, the generator shall contact the owner or operator of the designated facility to which the hazardous waste was to be transported to determine the status of the hazardous waste.

(11) A generator shall submit an exception report to the department if the generator has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days after the date on which the hazardous waste was accepted by the initial transporter. The exception report shall include all of the following:

(a) A legible copy of the manifest.

(b) A cover letter signed by the generator or the generator's authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

(12) A generator shall keep a copy of each manifest signed and dated by the initial transporter for 3 years or until the generator receives a signed and dated copy from the owner or operator of the designated facility that received the hazardous waste. The generator shall keep the copy of the manifest signed and dated by the owner or operator of the designated facility for 3 years. The retention periods required by this subsection are automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007;—Am. 2008, Act 403, Imd. Eff. Jan. 6, 2009;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2013, Act 73, Eff. Oct. 1, 2013;—Am. 2014, Act 287, Imd. Eff. Sept. 23, 2014.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11136 Certifying acceptance of waste for transportation; delivery of hazardous waste and manifest; period for keeping copy of manifest; review and inspection of manifest; extension of retention period.

Sec. 11136. (1) The hazardous waste transporter shall certify acceptance of waste for transportation and shall deliver the hazardous waste and accompanying manifest only to the destination specified by the generator on the manifest.

(2) The hazardous waste transporter shall keep a copy of the manifest for a period of 3 years and shall make it readily available for review and inspection by the department, the director of public health, an authorized representative of the director of public health, a peace officer, or a representative of the United States environmental protection agency. The retention period required by this subsection shall be automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

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324.11137 Accepting delivery of hazardous waste; condition; duties of owner or operator.

Sec. 11137. The treatment, storage, or disposal facility owner or operator shall accept delivery of hazardous waste only if delivery is accompanied by a manifest properly certified by both the generator and the transporter and the treatment, storage, or disposal facility is the destination indicated on the manifest. The treatment, storage, or disposal facility owner or operator also shall do all of the following:

(a) Certify on the manifest receipt of the hazardous waste and return a signed copy of the manifest to the department within a period of 10 days after the end of the month for all hazardous waste received within that month.

(b) Return a signed copy of the manifest to the generator.

(c) Keep permanent records pursuant to the rules promulgated by the department.

(d) Compile a periodic report of hazardous waste treated, stored, or disposed of as required by the department under rules promulgated by the department.

(e) Retain a copy of each manifest and report described in this section for a period of 3 years and make each copy readily available for review and inspection by the department, the director of public health or a designated representative of the director of public health, a peace officer, or a representative of the United States environmental protection agency. The retention period required by this subdivision is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

Administrative rules: R 299.9101 et seq. of the Michigan Administrative Code.

324.11138 Generator of hazardous waste; duties; records; report.

Sec. 11138. (1) A generator of hazardous waste shall do the following:

(a) Compile and maintain information and records regarding the quantities of hazardous waste generated, characteristics and composition of the hazardous waste, and the disposition of hazardous waste generated.

(b) Utilize proper labeling and containerization of hazardous waste as required by the department.

(c) Provide for the transport of hazardous waste only by a transporter permitted under the hazardous materials transportation act.

(d) Utilize and retain a manifest for each shipment of hazardous waste transported to property that is not on site as required by section 11135 and assure that the treatment, storage, or disposal facility to which the waste is transported is a designated facility.

(e) Provide the information on the manifest as required under section 11135(1) to each person transporting, treating, storing, or disposing of hazardous waste.

(f) Keep all records readily available for review and inspection by the department, the department of state police, a peace officer, or a representative of the United States environmental protection agency.

(g) Retain all records for a period of 3 years. The retention period required by this subdivision is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department.

(h) Compile and submit a periodic report of hazardous waste generated, stored, transferred, treated, disposed of, or transported for treatment, storage, or disposal as required by the department.

(2) A generator who also operates a treatment, storage, or disposal facility shall keep records of all hazardous waste produced and treated, stored, or disposed. The generator shall submit a report to the department within a period of 10 days after the end of each month for all waste produced and treated, stored, or disposed.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11139 Condition of obtaining operating license for disposal facility; condition of obtaining operating license for landfill.

Sec. 11139. (1) As a condition of obtaining an operating license for a disposal facility pursuant to section 11123, the applicant shall demonstrate to the department that the owner of the property has recorded on the deed to the property or some other document that is normally examined during a title search a notice that will

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notify in perpetuity any potential purchaser of the following:

(a) That the property has been used to manage hazardous wastes.

(b) That the use of the land should not disturb the final cover, liners, components of any containment system, or the function of the monitoring systems on or in the property.

(c) That the survey plat and records of type, location, and quantity of hazardous waste on or in the property have been filed with the local zoning or land use authority as required by the rules promulgated under this part.

(2) As a condition of obtaining an operating license for a landfill pursuant to section 11123, the applicant shall demonstrate to the department that an instrument imposing a restrictive covenant upon the land involved has been executed by all of the owners of the tract of land upon which the landfill is to be located. The instrument imposing the restrictive covenant shall be filed for record by the department in the office of the register of deeds in the county in which the disposal facility is located. The covenant shall state that the land has been or may be used as a landfill for disposal of hazardous waste and that neither the property owners, agents, or employees, nor any of their heirs, successors, lessees, or assignees shall engage in filling, grading, excavating, building, drilling, or mining on the property following completion of the landfill without authorization of the department. In giving authorization, the department shall consider, at a minimum, the original design, type of operation, hazardous waste deposited, and the state of decomposition of the fill. Before authorizing any activity that would disturb the integrity of the final cover of a landfill, the department must find either that the disturbance of the final cover is necessary to the proposed use of the property and will not increase the potential hazard to human health or the environment or that disturbance of the final cover is necessary to reduce a threat to human health or the environment.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11140 Closure and postclosure monitoring and maintenance plan; submission; contents; rules.

Sec. 11140. (1) The owner or operator of a treatment, storage, or disposal facility shall submit a closure plan to the department as part of the application for an operating license under section 11123. In addition, the owner or operator of a disposal facility shall submit a postclosure monitoring and maintenance plan to the department as part of the application. At a minimum, the closure plan shall include a description of how the facility shall be closed, possible uses of the land after closure, anticipated time until closure, estimated time for closure, and each anticipated partial closure. Those facilities described in section 11123(6) and (8) shall submit a closure and, if required by rule, a postclosure plan with their operating license application.

(2) The department shall promulgate rules regarding notification before closure of a treatment, storage, or disposal facility, length of time permitted for closure, removal and decontamination of equipment, security, groundwater and leachate monitoring system, sampling analysis and reporting requirements, and any other pertinent requirements.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2010, Act 357, Imd. Eff. Dec. 22, 2010.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

Administrative rules: R 299.9101 et seq. of the Michigan Administrative Code.

324.11141 Cost of closing and postclosure monitoring and maintenance of facility; methods of assurance; amount; periodic adjustment; violation.

Sec. 11141. An owner or operator of a treatment, storage, or disposal facility shall file, as a part of the application for a license to operate, a surety bond or other suitable instrument or mechanism or establish a secured trust fund, as approved by the department, to cover the cost of closing the treatment, storage, or disposal facility after its capacity is reached or operations have otherwise terminated. In addition, the owner or operator of a disposal facility shall also file a surety bond or other suitable instrument or mechanism or establish a secured trust fund, approved by the department, to cover the cost of postclosure monitoring and maintenance of the facility. An owner or operator may use a combination of bonds, instruments, mechanisms, or funds, as approved by the department, to satisfy the requirements of this section. The bond, instrument, mechanism, or fund, or combination of these methods of assurance, shall be in an amount equal to a reasonable estimate of the cost required to adequately close the facility, based on the level of operations

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proposed in the operating license application, and, with respect to a disposal facility, to monitor and maintain the site for a period of at least 30 years. The bond, instrument, mechanism, or fund, or the combination of these methods of assurance, shall be adjusted periodically as determined by rule to account for inflation or changes in the permitted level of operations. Failure to maintain the bond, instrument, mechanism, or fund, or combination of these methods of assurance, constitutes a violation of this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

Administrative rules: R 299.9101 et seq. of the Michigan Administrative Code.

324.11143 Hazardous waste service fund; creation; financing; uses of fund; administration; expenditures; expenses; rules.

Sec. 11143. (1) There is created within the state treasury a hazardous waste service fund of not less than $1,000,000.00 to be financed by appropriations for the following uses:

(a) For hazardous waste emergencies as defined by rule.

(b) For use in ensuring the closure and post closure monitoring and maintenance of treatment, storage, or disposal facilities.

(2) The department shall administer the fund and authorize expenditures upon a finding of actual or potential environmental damage caused by hazardous waste or when the owner or operator of the treatment, storage, or disposal facility is not fulfilling his or her obligation in regard to closure or postclosure monitoring and maintenance of the site and the surety bond, instrument, mechanism, or secured trust fund maintained by the owner or operator of a treatment, storage, or disposal facility as required by section 11141 is inadequate or is no longer in effect.

(3) After an expenditure from the fund, the department immediately shall request the attorney general to begin proceedings to recover any expenditure from the fund from the person responsible for the hazardous waste emergency or the owner or operator of a treatment, storage, or disposal facility who is not fulfilling his or her obligation in regard to closure or postclosure monitoring and maintenance of a facility. If the owner of the property refuses to pay expenses incurred, the expenses shall be assessed against the property and shall be collected and treated in the same manner as taxes assessed under the laws of the state.

(4) The department shall promulgate rules to define a hazardous waste emergency and to establish the method of payment from the fund.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11144 Inspection; filing report for licensed facility; complaint or allegation; record; investigation; report; notice of violation or emergency situation.

Sec. 11144. (1) The department shall inspect and file a written report not less than 4 times per year for each licensed treatment, storage, and disposal facility.

(2) A person may register with the department a complaint or allegation of improper action or violation of this part, a rule, or a condition of the license to operate a treatment, storage, or disposal facility.

(3) Upon receipt of a complaint or allegation from a municipality, the department shall make a record of the complaint and shall order an inspection of the treatment, storage, or disposal facility, or other location of alleged violation to investigate the complaint or allegation within not more than 5 business days after receipt of the complaint or allegation. If a complaint or allegation is of a highly serious nature, as determined by the department, the facility or the location of the alleged violation shall be inspected as quickly as possible.

(4) Following an investigation of a complaint or allegation under subsection (3), the department shall make a written report to the municipality within 15 days.

(5) A person who has knowledge that hazardous waste is being treated, disposed of, or stored in violation of this part shall notify the department. A person who has knowledge that an emergency situation exists shall notify the department and the department of community health.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

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324.11145 Administration and enforcement of part by certified health department; certification procedures; rescission of certification; annual grant; costs; rules.

Sec. 11145. (1) The department may certify a city, county, or district health department to administer and enforce portions of this part but only to an extent consistent with obtaining and maintaining authorization of the state's hazardous waste management program pursuant to sections 3006 to 3009 of subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6926 to 6929. Certification procedures shall be established by the department by rule. The department may rescind certification upon the request of the certified city, county, or district health department, or after reasonable notice and hearing, if the department finds that a certified health department is not administering and enforcing this part as required.

(2) In order for a certified health department to carry out the responsibilities authorized under this part, an annual grant shall be appropriated by the legislature from the general fund of the state to provide financial assistance to each certified health department. A certified health department shall be eligible to receive 100% of its reasonable costs as determined by the department based on criteria established by rule. The department shall promulgate rules for distribution of the appropriated funds.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

Administrative rules: R 299.9101 et seq. of the Michigan Administrative Code.

324.11146 Request for information and records; purpose; court authorization; inspection; samples; probable cause as to violation; search and seizure; forfeiture.

Sec. 11146. (1) Any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous waste shall furnish information relating to the hazardous wastes or permit access to and copying of all records relating to the hazardous wastes, or both, if the information and records are required to be kept under this part or the rules promulgated under this part, upon a request of the department, made for the purpose of developing a rule or enforcing or administering this part or a rule promulgated under this part. This subsection does not limit the department's authority to pursue appropriate court authorization in order to obtain information pertaining to enforcement actions under this part.

(2) The department may enter at reasonable times any treatment, storage, or disposal facility or other place where hazardous wastes are or have been generated, stored, treated, disposed of, or transported from and may inspect the facility or other place and obtain from any person samples of the hazardous wastes and samples of the containers or labeling of the wastes for the purpose of developing a rule or enforcing or administering this part or a rule promulgated under this part.

(3) If the department or a law enforcement official has probable cause to believe that a person is violating this part or a rule promulgated under this part, the department or law enforcement official may search without a warrant a vehicle or equipment that is possessed, used, or operated by that person. The department or a law enforcement official may seize a vehicle, equipment, or other property used or operated in a manner or for a purpose contrary to this part or a rule promulgated under this part. A vehicle, equipment, or other property used in violation of this part or a rule promulgated under this part is subject to seizure and forfeiture as provided in chapter 47 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11147 Violation as misdemeanor; penalty; appearance ticket.

Sec. 11147. A person who violates section 11132a(1)(b) or (n) or who violates rules promulgated under section 11132a(1)(b) or (n) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both, for each violation. A law enforcement officer or a conservation officer may issue an appearance ticket to a person who is in violation of section 11132a(1)(b) or (n) or the rules promulgated under section 11132a(1)(b) or (n).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

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324.11148 Imminent and substantial hazard to health; endangering or causing damage to public health or environment; actions by director; determination.

Sec. 11148. (1) Subject to subsection (2), upon receipt of information that the storage, transportation, treatment, or disposal of hazardous waste may present an imminent and substantial hazard to the health of persons or to the natural resources, or is endangering or causing damage to public health or the environment, the department, after consultation with the director of public health or a designated representative of the director of public health, shall take 1 or more of the following actions:

(a) Issue an order directing the owner or operator of the treatment, storage, or disposal facility, the generator, the transporter, or the custodian of the hazardous waste that constitutes the hazard, to take the steps necessary to prevent the act or eliminate the practice that constitutes the hazard. The order may include permanent or temporary cessation of the operation of a treatment, storage, or disposal facility, generator, or transporter. An order issued under this subdivision may be issued without prior notice or hearing and shall be complied with immediately. An order issued under this subdivision shall not remain in effect more than 7 days without affording the owner or operator or custodian an opportunity for a hearing. In issuing an order calling for corrective action, the department shall specify the precise nature of the corrective action necessary and the specific time limits for performing the corrective action. If corrective action is not completed within the time limit specified and pursuant to the department's requirements, the department shall issue a cease and desist order against the owner or operator of the treatment, storage, or disposal facility, generator, or transporter and initiate action to revoke the operating license and take appropriate action.

(b) Request that the attorney general commence an action to enjoin the act or practice and obtain injunctive relief upon a showing by the department that a person has engaged in the prohibited act or practice.

(c) Revoke a permit, license, or construction permit after reasonable notice and hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, if the department finds that a treatment, storage, or disposal facility is not, or has not been, constructed or operated pursuant to the approved plans or this part and the rules promulgated under this part, or the conditions of a license or construction permit.

(2) A determination of an instance of imminent and substantial hazard to the health of persons shall be made by the director of community health.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11149 Tearing down, removing, or destroying sign or notice as misdemeanor; penalty.

Sec. 11149. A person who willfully tears down, removes, or destroys any sign or notice warning of the presence of hazardous waste or marking the boundaries of a hazardous waste treatment, storage, or disposal facility is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11150 Order of noncompliance; order suspending or restricting license of facility.

Sec. 11150. (1) Upon receipt and verification of information that a licensed storage, treatment, or disposal facility does not have or has not maintained a suitable instrument or mechanism required under section 11141, or that the hazardous waste at the licensed facility exceeds the maximum quantities allowed under the storage, treatment, or disposal facility's license issued under this part, the department may issue an order of noncompliance directing the owner or operator of the storage, treatment, or disposal facility to take steps to eliminate the act or practice that results in a violation listed in this section. An order issued pursuant to this section shall specify the corrective action necessary and may order a licensed facility that has exceeded the maximum quantities of hazardous waste allowed under the terms of the facility's license to cease receiving hazardous waste. The order shall specify the time limit in which corrective action must be completed. If a licensed storage, treatment, or disposal facility comes into compliance with this part following the issuance of an order of noncompliance, the department shall send written verification of compliance to the owner or operator of the facility.

(2) An order of noncompliance issued pursuant to subsection (1) that requires a licensed facility to reduce

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the quantity of hazardous waste on site and to cease receiving hazardous waste shall not remain in effect for more than 7 days without affording the owner or operator an opportunity for a hearing. If the order remains in effect following the hearing, or if the owner or operator of the facility waives his or her right to a hearing, the owner or operator shall cooperate with the department in developing and implementing a compliance plan to reduce the amount of hazardous waste at the facility. If the department determines that the owner or operator has failed to make reasonable and continuous efforts to comply with the order of noncompliance and the resulting compliance plan, the department may issue an order suspending or restricting the facility's license pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. An order provided for in this subsection that suspends or restricts a license following the licensed facility's failure to comply with an order of noncompliance provided for in this section shall not remain in effect for more than 7 days without affording the owner or operator of the facility an opportunity for a hearing to contest the suspension or restriction.

(3) If the owner or operator of a storage, treatment, or disposal facility receives an order of noncompliance issued pursuant to subsection (1) for failing to maintain a suitable instrument or mechanism required under section 11141 and does not make reasonable efforts to comply with the order of noncompliance, the department may issue an order suspending or restricting the facility's license pursuant to Act No. 306 of the Public Acts of 1969. An order provided for in this subsection that suspends or restricts a license following the licensed facility's failure to comply with an order of noncompliance provided for in this section shall not remain in effect for more than 7 days without affording the owner or operator of the facility an opportunity for a hearing to contest the suspension or restriction.

(4) Upon receipt and verification that a storage, treatment, or disposal facility has not maintained a suitable instrument or mechanism required under section 11141 or that hazardous waste at a licensed facility exceeds the maximum quantities allowed under the facility's license and the owner or operator of the facility has previously been issued an order of noncompliance under this section, the department may do either of the following:

(a) Issue a second or subsequent order of noncompliance and proceed in the manner provided for in subsection (2) or (3).

(b) Initiate an action to suspend or restrict the facility's license or permit pursuant to Act No. 306 of the Public Acts of 1969, without first issuing an order of noncompliance.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11151 Violation of permit, license, rule, or part; order requiring compliance; civil action; jurisdiction; imposition, collection, and disposition of fine; conduct constituting misdemeanor; penalty; state of mind and knowledge; affirmative defense; preponderance of evidence; definition; action for damages and costs; disposition and use of damages and costs collected; awarding costs of litigation; intervention.

Sec. 11151. (1) If the department finds that a person is in violation of a permit, license, rule promulgated under this part, or requirement of this part including a corrective action requirement of this part, the department may issue an order requiring the person to comply with the permit, license, rule, or requirement of this part including a corrective action requirement of this part. The attorney general or a person may commence a civil action against a person, the department, or a health department certified under section 11145 for appropriate relief, including injunctive relief for a violation of this part including a corrective action requirement of this part, or a rule promulgated under this part. An action under this subsection may be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted under this subsection, the court may impose a civil fine of not more than $25,000.00 for each instance of violation and, if the violation is continuous, for each day of continued noncompliance. A fine collected under this subsection shall be deposited in the general fund of the state.

(2) A person who transports, treats, stores, disposes, or generates hazardous waste in violation of this part, or contrary to a permit, license, order, or rule issued or promulgated under this part, or who makes a false statement, representation, or certification in an application for, or form pertaining to, a permit, license, or order or in a notice or report required by the terms and conditions of an issued permit, license, or order, or a person who violates section 11144(5), is guilty of a misdemeanor punishable by a fine of not more than $25,000.00 for each instance of violation and, if the violation is continuous, for each day of violation, or

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imprisonment for not more than 1 year, or both. If the conviction is for a violation committed after a first conviction of the person under this subsection, the person is guilty of a misdemeanor punishable by a fine of not more than $50,000.00 for each instance of violation and, if the violation is continuous, for each day of violation, or by imprisonment for not more than 2 years, or both. Additionally, a person who is convicted of a violation under this subsection shall be ordered to pay all costs of corrective action associated with the violation.

(3) Any person who knowingly stores, treats, transports, or disposes of any hazardous waste in violation of subsection (2) and who knows at that time that he or she thereby places another person in imminent danger of death or serious bodily injury, and if his or her conduct in the circumstances manifests an unjustified and inexcusable disregard for human life, or if his or her conduct in the circumstances manifests an extreme indifference for human life, upon conviction, is subject to a fine of not more than $250,000.00 or imprisonment for not more than 2 years, or both, except that any person whose actions constitute an extreme indifference for human life, upon conviction, is subject to a fine of not more than $250,000.00 or imprisonment for not more than 5 years, or both. A defendant that is not an individual and not a governmental entity, upon conviction, is subject to a fine of not more than $1,000,000.00. Additionally, a person who is convicted of a violation under this subsection shall be ordered to pay all costs of corrective action associated with the violation.

(4) For the purposes of subsection (3), a person's state of mind is knowing with respect to:

(a) His or her conduct, if he or she is aware of the nature of his or her conduct.

(b) An existing circumstance, if he or she is aware or believes that the circumstance exists.

(c) A result of his or her conduct, if he or she is aware or believes that his or her conduct is substantially certain to cause danger of death or serious bodily injury.

(5) For purposes of subsection (3), in determining whether a defendant who is an individual knew that his or her conduct placed another person in imminent danger of death or serious bodily injury, both of the following apply:

(a) The person is responsible only for actual awareness or actual belief that he or she possessed.

(b) Knowledge possessed by a person other than the defendant but not by the defendant himself or herself may not be attributed to the defendant. However, in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself or herself from relevant information.

(6) It is an affirmative defense to a prosecution under this part that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of either of the following:

(a) An occupation, a business, or a profession.

(b) Medical treatment or professionally approved methods and the other person had been made aware of the risks involved prior to giving consent.

(7) The defendant may establish an affirmative defense under subsection (6) by a preponderance of the evidence.

(8) For purposes of subsection (3), “serious bodily injury” means each of the following:

(a) Bodily injury that involves a substantial risk of death.

(b) Unconsciousness.

(c) Extreme physical pain.

(d) Protracted and obvious disfigurement.

(e) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(9) In addition to a fine, the attorney general may bring an action in a court of competent jurisdiction to recover the full value of the damage done to the natural resources of this state and the costs of surveillance and enforcement by the state resulting from the violation. The damages and cost collected under this subsection shall be deposited in the general fund if the damages or costs result from impairment or destruction of the fish, wildlife, or other natural resources of the state and shall be used to restore, rehabilitate, or mitigate the damage to those resources in the affected area, and for the specific resource to which the damages occurred.

(10) The court, in issuing a final order in an action brought under this part, may award costs of litigation, including reasonable attorney and expert witness fees to a party, if the court determines that the award is appropriate.

(11) A person who has an interest that is or may be affected by a civil or administrative action commenced under this part has a right to intervene in that action.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 439, Eff. Mar. 23, 1999.

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Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11152 Interstate and international cooperation; purpose.

Sec. 11152. The department shall encourage interstate and international cooperation for the improved management of hazardous waste; for improved, and so far as is practicable, uniform state laws relating to the management of hazardous waste; and compacts between this and other states for the improved management of hazardous waste.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11153 Site identification number; user charges; violations; maintenance of information; summary of findings; report; definitions.

Sec. 11153. (1) A generator, transporter, or treatment, storage, or disposal facility shall obtain and utilize a site identification number assigned by the United States environmental protection agency or the department. Until October 1, 2017, the department shall assess a site identification number user charge of $50.00 for each site identification number it issues. The department shall not issue a site identification number under this subsection unless the site identification number user charge and the tax identification number for the person applying for the site identification number have been received by the department.

(2) Until October 1, 2017, the department shall annually assess hazardous waste management program user charges as follows:

(a) A generator shall pay a handler user charge that is the highest of the following applicable fees:

(*i*) A generator who generates more than 100 kilograms but less than 1,000 kilograms of hazardous waste in any month during the calendar year shall pay to the department an annual handler user charge of $100.00.

(*ii*) A generator who generates 1,000 kilograms or more of hazardous waste in any month during the calendar year and who generates less than 900,000 kilograms during the calendar year shall pay to the department an annual handler user charge of $400.00.

(*iii*) A generator who generates 1,000 kilograms or more of hazardous waste in any month during the calendar year and who generates 900,000 kilograms or more of hazardous waste during the calendar year shall pay to the department an annual handler user charge of $1,000.00.

(b) An owner or operator of a treatment, storage, or disposal facility for which an operating license is required under section 11123 or for which an operating license has been issued under section 11125 shall pay to the department an annual handler user charge of $2,000.00.

(c) A used oil processor or rerefiner, a used oil burner, or a used oil fuel marketer as defined in the rules promulgated under this part shall pay to the department an annual handler user charge of $100.00.

(3) A handler shall pay the handler user charge specified in subsection (2)(a) to (c) for each of the activities conducted during the previous calendar year.

(4) Handler user charges shall be paid using a form provided by the department. The handler shall certify that the information on the form is accurate. The department shall send forms to the handlers by March 30 of each year. A handler shall return the completed forms and the appropriate payment to the department by April 30 of each year.

(5) A handler who fails to provide timely and accurate information, a complete form, or the appropriate handler user charge is in violation of this part and is subject to both of the following:

(a) Payment of the handler user charge and an administrative fine of 5% of the amount owed for each month that the payment is delinquent. Any payments received after the fifteenth of the month after the due date shall be considered delinquent for that month. However, the administrative fine shall not exceed 25% of the total amount owed.

(b) Beginning 5 months after the date payment of the handler user charge is due, if the amount owed under subdivision (a) is not paid in full, at the request of the department, an action by the attorney general for the collection of the amount owed under subdivision (a) and the actual cost to the department in attempting to collect the amount owed under subdivision (a).

(6) The department shall maintain information regarding the site identification number user charges and the handler user charges collected under this section as necessary to satisfy the reporting requirements of subsection (8).

(7) The site identification number user charges and the handler user charges collected under this section

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and any amounts collected under subsection (5) for a violation of this section shall be forwarded to the state treasurer and deposited in the environmental pollution prevention fund created in section 11130.

(8) The department shall evaluate the effectiveness and adequacy of the site identification number user charges and the handler user charges collected under this section relative to the overall revenue needs of the hazardous waste management program administered under this part. Not later than April 1 of each even-numbered year, the department shall submit to the legislature a report summarizing the department's findings under this subsection.

(9) As used in this section:

(a) "Handler" means the person required to pay the handler user charge.

(b) "Handler user charge" means an annual hazardous waste management program user charge provided for in subsection (2).

History: Add. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007;—Am. 2008, Act 403, Imd. Eff. Jan. 6, 2009;—Am. 2010, Act 357, Imd. Eff. Dec. 22, 2010;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2013, Act 73, Eff. Oct. 1, 2013;—Am. 2014, Act 287, Imd. Eff. Sept. 23, 2014.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

PART 113
LANDFILL MAINTENANCE TRUST FUND

324.11301 Definitions.

Sec. 11301. As used in this part:

(a) “Fund” means the landfill maintenance trust fund created in section 11302 .

(b) “Response activity” means response activity as defined in part 201.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.11302 Landfill maintenance trust fund; creation; separate fund; revenue.

Sec. 11302. (1) There is hereby created the landfill maintenance trust fund. The fund shall be established as a separate fund in the department of treasury.

(2) The fund shall receive as revenue money from any source not to exceed $500,000.00, as appropriated by the legislature.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.11303 Expenditure of interest and earnings of fund; manner of maintaining corpus of fund.

Sec. 11303. (1) The interest and earnings of the fund shall be expended by the department to monitor the effectiveness of response activity and to provide necessary long-term maintenance only at those landfills that are sites of polybrominated biphenyls contamination where the department has undertaken response activity through the use of funds appropriated by the state from a judicially approved settlement.

(2) The corpus of the fund shall be maintained by the state treasurer in a manner that will provide for future disbursements to the department to ensure that the sites described in subsection (1) are properly monitored and maintained for as long as considered necessary by the department to assure the protection of the public health, safety, welfare, and the environment.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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324.11304 Investment of fund.

Sec. 11304. The state treasurer shall direct the investment of the fund in the same manner as surplus funds are invested.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

PART 115

SOLID WASTE MANAGEMENT

324.11501 Meanings of words and phrases.

Sec. 11501. For purposes of this part, the words and phrases defined in sections 11502 to 11506 have the meanings ascribed to them in those sections.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11502 Definitions; A to C.

Sec. 11502. (1) "Agronomic rate" means a rate that meets both of the following requirements:

(a) Is generally recognized by the agricultural community or is calculated for a particular area of land to improve the physical nature of soil, such as structure, tilth, water retention, pH, or porosity, or to provide macronutrients or micronutrients in an amount not materially in excess of that needed by the crop, forest, or vegetation grown on the land.

(b) Takes into account and minimizes runoff of beneficial use by-products to surface water or neighboring properties, the percolation of excess nutrients beyond the root zone, and the liberation of metals from the soil into groundwater.

(2) "Ashes" means the residue from the burning of wood, scrap wood, tires, biomass, wastewater sludge, fossil fuels including coal or coke, or other combustible materials.

(3) "Beneficial use 1" means use as aggregate, road material, or building material that in ultimate use is or will be bonded or encapsulated by cement, limes, or asphalt.

(4) "Beneficial use 2" means use as any of the following:

(a) Construction fill at nonresidential property that meets all of the following requirements:

(*i*) Is placed at least 4 feet above the seasonal groundwater table.

(*ii*) Does not come into contact with a surface water body.

(*iii*) Is covered by concrete, asphalt pavement, or other material approved by the department.

(*iv*) Does not exceed 4 feet in thickness, except for areas where exceedances are incidental to variations in the existing topography. This subparagraph does not apply to construction fill placed underneath a building or other structure.

(b) Road base or soil stabilizer that does not exceed 4 feet in thickness except for areas where exceedances are incidental to variations in existing topography, is placed at least 4 feet above the seasonal groundwater table, does not come into contact with a surface water body, and is covered by concrete, asphalt pavement, or other material approved by the department.

(c) Road shoulder material that does not exceed 4 feet in thickness except for areas where exceedances are incidental to variations in existing topography, is placed at least 4 feet above the seasonal groundwater table, does not come into contact with a surface water body, is sloped, and is covered by asphalt pavement, concrete, 6 inches of gravel, or other material approved by the department.

(5) "Beneficial use 3" means applied to land as a fertilizer or soil conditioner under part 85 or a liming material under 1955 PA 162, MCL 290.531 to 290.538, if all of the following requirements are met:

(a) The material is applied at an agronomic rate consistent with generally accepted agricultural and management practices.

(b) The use, placement, or storage at the location of use does not do any of the following:

(*i*) Violate part 55 or create a nuisance.

(*ii*) Cause groundwater to no longer be fit for 1 or more protected uses as defined in R 323.2202 of the Michigan administrative code.

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(*iii*) Cause a violation of a part 31 surface water quality standard.

(6) "Beneficial use 4" means any of the following uses:

(a) To stabilize, neutralize, solidify, or otherwise treat waste for ultimate disposal at a facility licensed under this part or part 111.

(b) To treat wastewater, wastewater treatment sludge, or wastewater sludge in compliance with part 31 or the federal water pollution control act, 33 USC 1251 to 1387 at a private or publicly owned wastewater treatment plant.

(c) To stabilize, neutralize, solidify, cap, or otherwise remediate hazardous substances or contaminants as part of a response activity in compliance with part 201, part 213, or the comprehensive environmental response, compensation and liability act of 1980, 42 USC 9601 to 9657, or a corrective action in compliance with part 111 or the solid waste disposal act, 42 USC 6901 to 6992k.

(d) As construction material at a landfill licensed under this part.

(7) "Beneficial use 5" means blended with inert materials or with compost and used to manufacture soil.

(8) "Beneficial use by-product" means the following materials if the materials are stored for beneficial use or are used beneficially as specified and the requirements of section 11551(1) are met:

(a) Coal bottom ash or wood ash used for beneficial use 3 or wood ash or coal ash, except for segregated flue gas desulfurization material, used for beneficial use 1, 2, or 4.

(b) Pulp and paper mill ash used for beneficial use 1, 2, 3, or 4.

(c) Mixed wood ash used for beneficial use 1, 2, 3, or 4.

(d) Cement kiln dust used as a flue gas scrubbing reagent or for beneficial use 1, 2, 3, or 4.

(e) Lime kiln dust used as a flue gas scrubbing reagent or for beneficial use 1, 2, 3, or 4.

(f) Stamp sands used for beneficial use 1 or 2.

(g) Foundry sand from ferrous or aluminum foundries used for beneficial use 1, 2, 3, 4, or 5.

(h) Pulp and paper mill material, other than the following, used for beneficial use 3:

(*i*) Rejects, from screens, cleaners, and mills dispersion equipment, containing more than de minimis amounts of plastic.

(*ii*) Scrap paper.

(i) Spent media from sandblasting, with uncontaminated sand, newly manufactured, unpainted steel used for beneficial use 1 or 2.

(j) Dewatered concrete grinding slurry from public transportation agency road projects used for beneficial use 1, 2, 3, or 4.

(k) Lime softening residuals from the treatment and conditioning of water for domestic use or from a community water supply used for beneficial use 3 or 4.

(*l*) Soil washed or otherwise removed from sugar beets that is used for beneficial use 3.

(m) Segregated flue gas desulfurization material used for beneficial use 1 or 3.

(n) Materials and uses approved by the department under section 11553(3) or (4). Approval of materials and uses by the department under section 11553(3) or (4) does not require the use of those materials by any governmental entity or any other person.

(9) "Beverage container" means an airtight metal, glass, paper, or plastic container, or a container composed of a combination of these materials, which, at the time of sale, contains 1 gallon or less of any of the following:

(a) A soft drink, soda water, carbonated natural or mineral water, or other nonalcoholic carbonated drink.

(b) A beer, ale, or other malt drink of whatever alcoholic content.

(c) A mixed wine drink or a mixed spirit drink.

(10) "Bond" means a financial instrument executed on a form approved by the department, including a surety bond from a surety company authorized to transact business in this state, a certificate of deposit, a cash bond, an irrevocable letter of credit, insurance, a trust fund, an escrow account, or a combination of any of these instruments in favor of the department. The owner or operator of a disposal area who is required to establish a bond under another state statute or a federal statute may petition the department to allow such a bond to meet the requirements of this part. The department shall approve a bond established under another state statute or a federal statute if the bond provides equivalent funds and access by the department as other financial instruments allowed by this subsection.

(11) "Cement kiln dust" means particulate matter collected in air emission control devices serving Portland cement kilns.

(12) "Certificate of deposit" means a negotiable certificate of deposit held by a bank or other financial institution regulated and examined by a state or federal agency, the value of which is fully insured by an agency of the United States government. A certificate of deposit used to fulfill the requirements of this part shall be in the sole name of the department with a maturity date of not less than 1 year and shall be renewed

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not less than 60 days before the maturity date. An applicant who uses a certificate of deposit as a bond shall receive any accrued interest on that certificate of deposit upon release of the bond by the department.

(13) "Certified health department" means a city, county, or district department of health that is specifically delegated authority by the department to perform designated activities as prescribed by this part.

(14) "Coal ash" means the material recovered from systems for the control of air pollution from, or the noncombusted residue remaining after, the combustion of coal, including, but not limited to, bottom ash, fly ash, boiler slag, or fluidized-bed combustion ash. For beneficial use 2, coal ash does not include coal fly ash except for the following if used at nonresidential property:

(a) Class C fly ash under ASTM standard C618-12A.

(b) Class F fly ash under ASTM standard C618-12A if that fly ash forms a pozzolanic-stabilized mixture by being blended with lime, Portland cement, or cement kiln dust.

(c) A combination of class C fly ash and class F fly ash under ASTM standard C618-12A if that combination forms a pozzolanic-stabilized mixture by being blended with lime, Portland cement, or cement kiln dust and is used as a road base, soil stabilizer, or road shoulder material under subsection (4)(b) or (c).

(15) "Coal bottom ash" means ash particles from the combustion of coal that are too large to be carried in flue gases and that collect on furnace walls or at the bottom of the furnace.

(16) "Collection center" means a tract of land, building, unit, or appurtenance or combination thereof that is used to collect junk motor vehicles and farm implements under section 11530.

(17) "Composting facility" means a facility where composting of yard clippings or other organic materials occurs using mechanical handling techniques such as physical turning, windrowing, or aeration or using other management techniques approved by the director.

(18) "Consistency review" means evaluation of the administrative and technical components of an application for a permit or license or evaluation of operating conditions in the course of inspection, for the purpose of determining consistency with the requirements of this part, rules promulgated under this part, and approved plans and specifications.

(19) "Corrective action" means the investigation, assessment, cleanup, removal, containment, isolation, treatment, or monitoring of constituents, as defined in a facility's approved hydrogeological monitoring plan, released into the environment from a disposal area, or the taking of other actions related to the release as may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, the environment, or natural resources that is consistent with 42 USC 6941 to 6949a and regulations promulgated thereunder.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 2004, Act 35, Imd. Eff. Mar. 19, 2004;—Am. 2007, Act 212, Eff. Mar. 26, 2008;—Am. 2014, Act 178, Eff. Sept. 16, 2014.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11503 Definitions; D to G.

Sec. 11503. (1) "De minimis" refers to a small amount of material or number of items, as applicable, incidentally commingled with inert material for beneficial use by-products, or incidentally disposed of with other solid waste.

(2) "Department", subject to section 11554, means the department of environmental quality.

(3) "Director" means the director of the department.

(4) "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a substance into the environment that is or may become injurious to the public health, safety, or welfare, or to the environment.

(5) "Disposal area" means 1 or more of the following at a location as defined by the boundary identified in its construction permit or engineering plans approved by the department:

(a) A solid waste transfer facility.

(b) An incinerator.

(c) A sanitary landfill.

(d) A processing plant.

(e) Any other solid waste handling or disposal facility utilized in the disposal of solid waste. However, a waste diversion center is not a disposal area.

(6) "Diverted waste" means waste that meets all of the following requirements:

(a) Is generated by households, businesses, or governmental entities.

(b) Can lawfully be disposed of at a licensed sanitary landfill or municipal solid waste incinerator.

(c) Is separated from other waste.

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(d) Is 1 or more of the following:

(*i*) Hazardous material.

(*ii*) Liquid waste.

(*iii*) Pharmaceuticals.

(*iv*) Electronics.

(*v*) Batteries.

(*vi*) Light bulbs.

(*vii*) Pesticides.

(*viii*) Thermostats, switches, thermometers, or other devices that contain elemental mercury.

(*ix*) Sharps.

(*x*) Other wastes approved by the department that can be readily separated from solid waste for diversion to preferred methods of management and disposal.

(7) "Enforceable mechanism" means a legal method whereby this state, a county, a municipality, or another person is authorized to take action to guarantee compliance with an approved county solid waste management plan. Enforceable mechanisms include contracts, intergovernmental agreements, laws, ordinances, rules, and regulations.

(8) "Escrow account" means an account that is managed by a bank or other financial institution whose account operations are regulated and examined by a federal or state agency and that complies with section 11523b.

(9) "Farm" means that term as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(10) "Farm operation" means that term as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(11) "Financial assurance" means the mechanisms used to demonstrate that the funds necessary to meet the cost of closure, postclosure maintenance and monitoring, and corrective action will be available whenever they are needed.

(12) "Financial test" means a corporate or local government financial test or guarantee approved for type II landfills under 42 USC 6941 to 6949a and regulations promulgated thereunder. An owner or operator may use a single financial test for more than 1 facility. Information submitted to the department to document compliance with the test shall include a list showing the name and address of each facility and the amount of funds assured by the test for each facility. For purposes of the financial test, the owner or operator shall aggregate the sum of the closure, postclosure, and corrective action costs it seeks to assure with any other environmental obligations assured by a financial test under state or federal law.

(13) "Flue gas desulfurization material" means the material recovered from air pollution control systems that capture sulfur dioxide from the combustion of wood, coal, or fossil fuels, or other combustible materials, if the other combustible materials constitute less than 50% by weight of the total material combusted and the department determines in writing that the other combustible materials do not materially affect the character of the residue. Flue gas desulfurization material includes synthetic gypsum.

(14) "Food processing residuals" means any of the following:

(a) Residuals of fruits, vegetables, aquatic plants, or field crops.

(b) Otherwise unusable parts of fruits, vegetables, aquatic plants, or field crops from the processing thereof.

(c) Otherwise unusable food products that do not meet size, quality, or other product specifications and that were intended for human or animal consumption.

(15) "Foundry sand" means silica sand used in the metal casting process, including binding material or carbonaceous additives, from ferrous or nonferrous foundries.

(16) "GAAMPS" means the generally accepted agricultural and management practices under the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474.

(17) "Garbage" means rejected food wastes including waste accumulation of animal, fruit, or vegetable matter used or intended for food or that results from the preparation, use, cooking, dealing in, or storing of meat, fish, fowl, fruit, or vegetable matter.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 1998, Act 466, Imd. Eff. Jan. 4, 1999;—Am. 2007, Act 212, Eff. Mar. 26, 2008;—Am. 2014, Act 24, Imd. Eff. Mar. 4, 2014;—Am. 2014, Act 178, Eff. Sept. 16, 2014.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

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324.11504 Definitions; H to P.

Sec. 11504. (1) "Health officer" means a full-time administrative officer of a certified health department.

(2) "Inert material" means any of the following:

(a) Rock.

(b) Trees, stumps, and other similar land-clearing debris, if all of the following conditions are met:

(*i*) The debris is buried on the site of origin or another site, with the approval of the owner of the site.

(*ii*) The debris is not buried in a wetland or floodplain.

(*iii*) The debris is placed at least 3 feet above the groundwater table as observed at the time of placement.

(*iv*) The placement of the debris does not violate federal, state, or local law or create a nuisance.

(c) Uncontaminated excavated soil or dredged sediment. Excavated soil or dredged sediment is considered uncontaminated if it does not contain more than de minimis amounts of solid waste and 1 of the following applies:

(*i*) The soil or sediment is not contaminated by a hazardous substance as a result of human activity. Soil or sediment that naturally contains elevated levels of hazardous substances above unrestricted residential or any other part 201 generic soil cleanup criteria is not considered contaminated for purposes of this subdivision. A soil or sediment analysis is not required under this subparagraph if, based on past land use, there is no reason to believe that the soil or sediment is contaminated.

(*ii*) For any hazardous substance that could reasonably be expected to be present as a result of past land use and human activity, the soil or sediment does not exceed the background concentration, as that term is defined in part 201.

(*iii*) For any hazardous substance that could reasonably be expected to be present as a result of past land use and human activity, the soil or sediment falls below part 201 generic residential soil direct contact cleanup criteria and hazardous substances in leachate from the soil or sediment, using, at the option of the generator, EPA method 1311, 1312, or any other leaching protocol approved by the department, fall below part 201 generic residential health based groundwater drinking water values or criteria, and the soil or sediment would not cause a violation of any surface water quality standard established under part 31 at the area of placement, disposal, or use.

(d) Excavated soil from a site of environmental contamination, corrective action, or response activity if the soil is not a listed hazardous waste under part 111 and if hazardous substances in the soil do not exceed generic soil cleanup criteria for unrestricted residential use as defined in part 201 or background concentration as defined in part 201, as applicable.

(e) Construction brick, masonry, pavement, or broken concrete that is reused for fill, rip rap, slope stabilization, or other construction, if all of the following conditions are met:

(*i*) The use of the material does not violate section 3108, part 301, or part 303.

(*ii*) The material is not materially contaminated. Typical surface oil staining on pavement and concrete from driveways, roadways, and parking lots is not material contamination. Material covered in whole or in part with lead-based paint is materially contaminated.

(*iii*) The material does not include exposed reinforcing bars.

(f) Portland cement clinker produced by a cement kiln using wood, fossil fuels, or solid waste as a fuel or feedstock, but not including cement kiln dust generated in the process.

(g) Asphalt pavement or concrete pavement that meets all of the following requirements:

(*i*) Has been removed from a public right-of-way.

(*ii*) Has been stockpiled or crushed for reuse as aggregate material.

(*iii*) Does not include exposed reinforcement bars.

(h) Cuttings, drilling materials, and fluids used to drill or complete a well installed pursuant to part 127 of the public health code, 1978 PA 368, MCL 333.12701 to 333.12771, if the location of the well is not a facility under part 201.

(i) Any material determined by the department under section 11553(5) or (6) to be an inert material, either for general use or for a particular use.

(3) "Insurance" means insurance that conforms to the requirements of 40 CFR 258.74(d) provided by an insurer who has a certificate of authority from the director of insurance and financial services to sell this line of coverage. An applicant for an operating license shall submit evidence of the required coverage by submitting both of the following to the department:

(a) A certificate of insurance that uses wording approved by the department.

(b) A certified true and complete copy of the insurance policy.

(4) "Landfill" means a disposal area that is a sanitary landfill.

(5) "Letter of credit" means an irrevocable letter of credit that complies with 40 CFR 258.74(c).

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(6) "Lime kiln dust" means particulate matter collected in air emission control devices serving lime kilns.

(7) "Low-hazard industrial waste" means industrial material that has a low potential for groundwater contamination when managed in accordance with this part. The following materials are low-hazard industrial wastes:

(a) Coal ash or wood ash.

(b) Cement kiln dust.

(c) Pulp and paper mill material.

(d) Scrap wood.

(e) Sludge from the treatment and conditioning of water for domestic use.

(f) Residue from the thermal treatment of petroleum contaminated soil, media, or debris.

(g) Sludge from the treatment and conditioning of water from a community water supply.

(h) Foundry sand.

(i) Mixed wood ash, scrap wood ash, pulp and paper mill ash.

(j) Street cleanings.

(k) Asphalt shingles.

(*l*) New construction or production scrap drywall.

(m) Chipped or shredded tires.

(n) Copper slag.

(o) Copper stamp sands.

(p) Dredge material from nonremedial activities.

(q) Flue gas desulfurization material.

(r) Dewatered grinding slurry generated from public transportation agency road projects.

(s) Any material determined by the department under section 11553(7) to be a low-hazard industrial waste.

(8) "Medical waste" means that term as it is defined in section 13805 of the public health code, 1978 PA 368, MCL 333.13805.

(9) "Mixed wood ash" means the material recovered from air pollution control systems for, or the noncombusted residue remaining after, the combustion of any combination of wood, scrap wood, railroad ties, or tires, if railroad ties composed less than 35% by weight of the total combusted material and tires composed less than 10% by weight of the total combusted material.

(10) "Municipal solid waste incinerator" means an incinerator that is owned or operated by any person, and meets all of the following requirements:

(a) The incinerator receives solid waste from off site and burns only household waste from single and multiple dwellings, hotels, motels, and other residential sources, or this household waste together with solid waste from commercial, institutional, municipal, county, or industrial sources that, if disposed of, would not be required to be placed in a disposal facility licensed under part 111.

(b) The incinerator has established contractual requirements or other notification or inspection procedures sufficient to ensure that the incinerator receives and burns only waste referred to in subdivision (a).

(c) The incinerator meets the requirements of this part and the rules promulgated under this part.

(d) The incinerator is not an industrial furnace as defined in 40 CFR 260.10.

(e) The incinerator is not an incinerator that receives and burns only medical waste or only waste produced at 1 or more hospitals.

(11) "Municipal solid waste incinerator ash" means the substances remaining after combustion in a municipal solid waste incinerator.

(12) "Nonresidential property" means property not used or intended to be used for any of the following:

(a) A child day care center.

(b) An elementary school.

(c) An elder care and assisted living center.

(d) A nursing home.

(e) A single-family or multifamily dwelling unless the dwelling is part of a mixed use development and all dwelling units and associated outdoor residential use areas are located above the ground floor.

(13) "Perpetual care fund" means a trust or escrow account or perpetual care fund bond provided for in section 11525.

(14) "Perpetual care fund bond" means a surety bond, an irrevocable letter of credit, or a combination of these instruments in favor of and on a form approved by the department by which a perpetual care fund is established.

(15) "Pulp and paper mill ash" means the material recovered from air pollution control systems for, or the noncombusted residue remaining after, the combustion of any combination of coal, wood, pulp and paper mill material, wood or biomass fuel pellets, scrap wood, railroad ties, or tires, from a boiler, power plant, or

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furnace at a pulp and paper mill, if railroad ties composed less than 35% by weight of the total combusted material and tires composed less than 10% by weight of the total combusted material.

(16) "Pulp and paper mill material" means all of the following materials if generated at a facility that produces pulp or paper:

(a) Wastewater treatment sludge, including wood fibers, minerals, and microbial biomass.

(b) Rejects from screens, cleaners, and mills.

(c) Bark, wood fiber, and chips.

(d) Scrap paper.

(e) Causticizing residues, including lime mud and grit and green liquor dregs.

(f) Any material that the department determines has characteristics that are similar to any of the materials listed in subdivisions (a) to (e).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 2013, Act 250, Imd. Eff. Dec. 26, 2013;—Am. 2014, Act 178, Eff. Sept. 16, 2014.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11505 Definitions; R, S.

Sec. 11505. (1) "Recyclable materials" means source separated materials, site separated materials, high grade paper, glass, metal, plastic, aluminum, newspaper, corrugated paper, yard clippings, and other materials that may be recycled or composted.

(2) "Regional solid waste management planning agency" means the regional solid waste planning agency designated by the governor pursuant to 42 USC 6946.

(3) "Resource recovery facility" means machinery, equipment, structures, or any parts or accessories of machinery, equipment, or structures, installed or acquired for the primary purpose of recovering materials or energy from the waste stream.

(4) "Response activity" means an activity that is necessary to protect the public health, safety, welfare, or the environment, and includes, but is not limited to, evaluation, cleanup, removal, containment, isolation, treatment, monitoring, maintenance, replacement of water supplies, and temporary relocation of people.

(5) "Rubbish" means nonputrescible solid waste, excluding ashes, consisting of both combustible and noncombustible waste, including paper, cardboard, metal containers, yard clippings, wood, glass, bedding, crockery, demolished building materials, or litter of any kind that may be a detriment to the public health and safety.

(6) "Salvaging" means the lawful and controlled removal of reusable materials from solid waste.

(7) "Sharps" means that term as defined in section 13807 of the public health code, 1978 PA 368, MCL 333.13807.

(8) "Scrap wood" means wood or wood product that is 1 or more of the following:

(a) Plywood, particle board, pressed board, oriented strand board, fiberboard, resonated wood, or any other wood or wood product mixed with glue, resins, or filler.

(b) Wood or wood product treated with creosote or pentachlorophenol.

(c) Any wood or wood product designated as scrap wood in rules promulgated by the department.

(9) "Site separated material" means glass, metal, wood, paper products, plastics, rubber, textiles, garbage, or any other material approved by the department that is separated from solid waste for the purpose of recycling or conversion into raw materials or new products.

(10) "Slag" means the nonmetallic product resulting from melting or smelting operations for iron or steel.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2007, Act 212, Eff. Mar. 26, 2008;—Am. 2014, Act 24, Imd. Eff. Mar. 4, 2014;—Am. 2014, Act 178, Eff. Sept. 16, 2014.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11506 Definitions; S to Y.

Sec. 11506. (1) "Solid waste" means garbage, rubbish, ashes, incinerator ash, incinerator residue, street cleanings, municipal and industrial sludges, solid commercial waste, solid industrial waste, and animal waste. However, solid waste does not include the following:

(a) Human body waste.

(b) Medical waste.

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(c) Organic waste generated in the production of livestock and poultry.

(d) Liquid waste.

(e) Ferrous or nonferrous scrap directed to a scrap metal processor or to a reuser of ferrous or nonferrous products.

(f) Slag or slag products directed to a slag processor or to a reuser of slag or slag products.

(g) Sludges and ashes managed as recycled or nondetrimental materials appropriate for agricultural or silvicultural use pursuant to a plan approved by the department.

(h) The following materials that are used as animal feed, or are applied on, or are composted and applied on, farmland or forestland for an agricultural or silvicultural purpose at an agronomic rate consistent with GAAMPS:

(*i*) Food processing residuals and garbage.

(*ii*) Precipitated calcium carbonate from sugar beet processing.

(*iii*) Wood ashes resulting solely from a source that burns only wood that is untreated and inert.

(*iv*) Lime from kraft pulping processes generated prior to bleaching.

(*v*) Aquatic plants.

(i) Materials approved for emergency disposal by the department.

(j) Source separated materials.

(k) Site separated material.

(*l*) Coal ash, when used under any of the following circumstances:

(*i*) As a component of concrete, grout, mortar, or casting molds, if the coal ash does not have more than 6% unburned carbon.

(*ii*) As a raw material in asphalt for road construction, if the coal ash does not have more than 12% unburned carbon and passes Michigan test method for water asphalt preferential test, MTM 101, as set forth in the state transportation department's manual for the Michigan test methods (MTM).

(*iii*) As aggregate, road material, or building material that in ultimate use is or will be stabilized or bonded by cement, limes, or asphalt, or itself act as a bonding agent. To be considered to act as a bonding agent, the coal ash must have at least 10% available lime.

(*iv*) As a road base or construction fill that is placed at least 4 feet above the seasonal groundwater table and covered with asphalt, concrete, or other material approved by the department.

(m) Inert material.

(n) Soil that is washed or otherwise removed from sugar beets, has not more than 35% moisture content, and is registered as a soil conditioner under part 85. Any testing required to become registered under part 85 is the responsibility of the generator.

(o) Soil that is relocated under section 20120c.

(p) Diverted waste that is managed through a waste diversion center.

(q) Beneficial use by-products.

(r) Coal bottom ash, if substantially free of fly ash or economizer ash, when used as cold weather road abrasive.

(s) Stamp sands when used as cold weather road abrasive in the Upper Peninsula by any of the following:

(*i*) A public road agency.

(*ii*) Any other person pursuant to a plan approved by a public road agency.

(t) Any material that is reclaimed or reused in the process that generated it.

(u) Any secondary material that, as specified in or determined pursuant to 40 CFR part 241, is not a solid waste when combusted.

(v) Other wastes regulated by statute.

(2) "Solid waste hauler" means a person who owns or operates a solid waste transporting unit.

(3) "Solid waste processing plant" means a tract of land, building, unit, or appurtenance of a building or unit or a combination of land, buildings, and units that is used or intended for use for the processing of solid waste or the separation of material for salvage or disposal, or both, but does not include a plant engaged primarily in the acquisition, processing, and shipment of ferrous or nonferrous metal scrap, or a plant engaged primarily in the acquisition, processing, and shipment of slag or slag products.

(4) "Solid waste transporting unit" means a container, which may be an integral part of a truck or other piece of equipment used for the transportation of solid waste.

(5) "Solid waste transfer facility" means a tract of land, a building and any appurtenances, or a container, or any combination of land, buildings, or containers that is used or intended for use in the rehandling or storage of solid waste incidental to the transportation of the solid waste, but is not located at the site of generation or the site of disposal of the solid waste.

(6) "Source separated material" means any of the following materials if separated at the source of

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generation and not speculatively accumulated:

(a) Glass, metal, wood, paper products, plastics, rubber, textiles, garbage, or any other material approved by the department that is used for conversion into raw materials or new products. For the purposes of this subdivision, raw materials or new products include, but are not limited to, compost, biogas from anaerobic digestion, synthetic gas from gasification or pyrolysis, or other fuel. This subdivision does not prevent material from being classified as a renewable energy resource as defined in section 11 of the clean, renewable, and efficient energy act, 2008 PA 295, MCL 460.1011.

(b) Scrap wood and railroad ties used to fuel an industrial boiler, kiln, power plant, or furnace, subject to part 55, for production of new wood products, or for other uses approved by the department.

(c) Chipped or whole tires used to fuel an industrial boiler, kiln, power plant, or furnace, subject to part 55, or for other uses approved by the department. This subdivision does not prevent material from being classified as a renewable energy resource as defined in section 11 of the clean, renewable, and efficient energy act, 2008 PA 295, MCL 460.1011.

(d) Recovered paint solids used to fuel an industrial boiler, kiln, power plant, or furnace, subject to part 55, or for other uses approved by the department.

(e) Gypsum drywall generated from the production of wallboard used for stock returned to the production process or for other uses approved by the department.

(f) Flue gas desulfurization gypsum used for production of cement or wallboard or other uses approved by the department.

(g) Asphalt shingles that do not contain asbestos, rolled roofing, or tar paper used as a component in asphalt or used to fuel an industrial boiler, kiln, power plant, or furnace, subject to part 55, or for other uses approved by the department.

(h) Municipal solid waste incinerator ash that meets criteria specified by the department and that is used as daily cover at a disposal facility licensed pursuant to this part.

(i) Utility poles or pole segments reused as poles, posts, or similar uses approved by the department in writing.

(j) Railroad ties reused in landscaping, embankments, or similar uses approved by the department in writing.

(k) Any materials and uses approved by the department under section 11553(8).

(*l*) Any material determined by the department in writing prior to the effective date of the 2014 amendatory act that added this subdivision to be a source separated material.

(7) "Stamp sands" means finely grained crushed rock resulting from mining, milling, or smelting of copper ore and includes native substances contained within the crushed rock and any ancillary material associated with the crushed rock.

(8) "Treated wood" means wood or wood product that has been treated with 1 or more of the following:

(a) Chromated copper arsenate (CCA).

(b) Ammoniacal copper quat (ACQ).

(c) Ammoniacal copper zinc arsenate (ACZA).

(d) Any other chemical designated in rules promulgated by the department.

(9) "Trust fund" means a fund held by a trustee who has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(10) "Type I public water supply", "type IIa public water supply", "type IIb public water supply", and "type III public water supply" mean those terms, respectively, as described in R 325.10502 of the Michigan administrative code.

(11) "Waste diversion center" means property or a building, or a portion of property or a building, designated for the purpose of receiving or collecting diverted wastes and not used for residential purposes.

(12) "Wood" means trees, branches and associated leaves, bark, lumber, pallets, wood chips, sawdust, or other wood or wood product but does not include scrap wood, treated wood, painted wood or painted wood product, or any wood or wood product that has been contaminated during manufacture or use.

(13) "Wood ash" means any type of ash or slag resulting from the burning of wood.

(14) "Yard clippings" means leaves, grass clippings, vegetable or other garden debris, shrubbery, or brush or tree trimmings, less than 4 feet in length and 2 inches in diameter, that can be converted to compost humus. Yard clippings do not include stumps, agricultural wastes, animal waste, roots, sewage sludge, or garbage.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 65, Imd. Eff. May 31, 1995;—Am. 1996, Act 392, Imd. Eff. Oct. 3, 1996;—Am. 1998, Act 466, Imd. Eff. Jan. 4, 1999;—Am. 2007, Act 212, Eff. Mar. 26, 2008;—Am. 2010, Act 345, Imd. Eff. Dec. 21, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 24, Imd. Eff. Mar. 4, 2014;—Am. 2014, Act 178, Eff. Sept. 16, 2014.

Popular name: Act 451

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Popular name: NREPA

Popular name: Solid Waste Act

324.11507 Development of methods for disposal of solid waste; construction and administration of part; exemption of inert material from regulation.

Sec. 11507. (1) The department and a health officer shall assist in developing and encouraging methods for the disposal of solid waste that are environmentally sound, that maximize the utilization of valuable resources, and that encourage resource conservation including source reduction and source separation.

(2) This part shall be construed and administered to encourage and facilitate the effort of all persons to engage in source separation and site separation of material from solid waste, and other environmentally sound measures to prevent materials from entering the waste stream or which encourage the removal of materials from the waste stream.

(3) The department may exempt from regulation under this part solid waste that is determined by the department to be inert material for uses and in a manner approved by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11507a Report on amount of solid waste received by landfill and amount of remaining disposal capacity.

Sec. 11507a. (1) The owner or operator of a landfill shall annually submit a report to the state and the county and municipality in which the landfill is located that contains information on the amount of solid waste received by the landfill during the year itemized, to the extent possible, by county, state, or country of origin and the amount of remaining disposal capacity at the landfill. Remaining disposal capacity shall be calculated as the permitted capacity less waste in place for any area that has been constructed and is not yet closed plus the permitted capacity for each area that has a permit for construction under this part but has not yet been constructed. The report shall be submitted on a form provided by the department within 45 days following the end of each state fiscal year.

(2) By January 31 of each year, the department shall submit to the legislature a report summarizing the information obtained under subsection (1).

History: Add. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 2003, Act 153, Eff. Oct. 1, 2003;—Am. 2004, Act 39, Imd. Eff. Mar. 29, 2004.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11508 Solid waste management program; certification.

Sec. 11508. A city, county, or district health department may be certified by the department to perform a solid waste management program. Certification procedures shall be established by the department by rule. The department may rescind certification upon request of the certified health department or after reasonable notice and hearing if the department finds that a certified health department is not performing the program as required.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11509 Construction permit for establishment of disposal area; application; engineering plan; construction permit application fee for landfill; construction permit for solid waste transfer facility, solid waste processing plant, or other disposal area; fees; fee refund; permit denial; resubmission of application with additional information; modification or renewal of permit; multiple permits; disposition of fees.

Sec. 11509. (1) Except as otherwise provided in section 11529, a person shall not establish a disposal area except as authorized by a construction permit issued by the department pursuant to part 13. In addition, a person shall not establish a disposal area contrary to an approved solid waste management plan, or contrary to a permit, license, or final order issued pursuant to this part. A person proposing the establishment of a

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disposal area shall apply for a construction permit to the department through the health officer. If the disposal area is located in a county or city that does not have a certified health department, the application shall be made directly to the department.

(2) The application for a construction permit shall contain the name and residence of the applicant, the location of the proposed disposal area, the design capacity of the disposal area, and other information specified by rule. A person may apply to construct more than 1 type of disposal area at the same facility under a single permit. The application shall be accompanied by an engineering plan and a construction permit application fee. A construction permit application for a landfill shall be accompanied by a fee in an amount that is the sum of all of the following fees, as applicable:

(a) For a new sanitary landfill, a fee equal to the following amount:

(*i*) For a municipal solid waste landfill, $1,500.00.

(*ii*) For an industrial waste landfill, $1,000.00.

(*iii*) For a type III landfill limited to low hazard industrial waste, $750.00.

(b) For a lateral expansion of a sanitary landfill, a fee equal to the following amount:

(*i*) For a municipal solid waste landfill, $1,000.00.

(*ii*) For an industrial waste landfill, $750.00.

(*iii*) For a type III landfill limited to low hazard industrial waste, construction and demolition waste, or other nonindustrial waste, $500.00.

(c) For a vertical expansion of an existing sanitary landfill, a fee equal to the following amount:

(*i*) For a municipal solid waste landfill, $750.00.

(*ii*) For an industrial waste landfill, $500.00.

(*iii*) For an industrial waste landfill limited to low hazard industrial waste, construction and demolition waste, or other nonindustrial waste, $250.00.

(3) The application for a construction permit for a solid waste transfer facility, a solid waste processing plant, other disposal area, or a combination of these, shall be accompanied by a fee in the following amount:

(a) For a new facility for municipal solid waste, or a combination of municipal solid waste and waste listed in subdivision (b), $1,000.00.

(b) For a new facility for industrial waste, or construction and demolition waste, $500.00.

(c) For the expansion of an existing facility for any type of waste, $250.00.

(4) If an application is returned to the applicant as administratively incomplete, the department shall refund the entire fee. If a permit is denied or an application is withdrawn, the department shall refund 1/2 the amount specified in subsection (3) to the applicant. An applicant for a construction permit, within 12 months after a permit denial or withdrawal, may resubmit the application and the refunded portion of the fee, together with the additional information as needed to address the reasons for denial, without being required to pay an additional application fee.

(5) An application for a modification to a construction permit or for renewal of a construction permit which has expired shall be accompanied by a fee of $250.00. Increases in final elevations that do not result in an increase in design capacity or a change in the solid waste boundary shall be considered a modification and not a vertical expansion.

(6) A person who applies to permit more than 1 type of disposal area at the same facility shall pay a fee equal to the sum of the applicable fees listed in this section.

(7) The department shall deposit permit application fees collected under this section in the solid waste staff account of the solid waste management fund established in section 11550.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11510 Advisory analysis of proposed disposal area; duties of department upon receipt of construction permit application.

Sec. 11510. (1) Before the submission of a construction permit application for a new disposal area, the applicant shall request a health officer or the department to provide an advisory analysis of the proposed disposal area. However, the applicant, not less than 15 days after the request, and notwithstanding an analysis result, may file an application for a construction permit.

(2) Upon receipt of a construction permit application, the department shall do all of the following:

(a) Immediately notify the clerk of the municipality in which the disposal area is located or proposed to be located, the local soil erosion and sedimentation control agency, each division within the department and the

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department of natural resources that has responsibilities in land, air, or water management, and the designated regional solid waste management planning agency.

(b) Publish a notice in a newspaper having major circulation in the vicinity of the proposed disposal area. The required published notice shall contain a map indicating the location of the proposed disposal area and shall contain a description of the proposed disposal area and the location where the complete application package may be reviewed and where copies may be obtained.

(c) Indicate in the public, departmental, and municipality notice that the department shall hold a public hearing in the area of the proposed disposal area if a written request is submitted by the applicant or a municipality within 30 days after the date of publication of the notice, or by a petition submitted to the department containing a number of signatures equal to not less than 10% of the number of registered voters of the municipality where the proposed disposal area is to be located who voted in the last gubernatorial election. The petition shall be validated by the clerk of the municipality. The public hearing shall be held after the department makes a preliminary review of the application and all pertinent data and before a construction permit is issued or denied.

(d) Conduct a consistency review of the plans of the proposed disposal area to determine if it complies with this part and the rules promulgated under this part. The review shall be made by persons qualified in hydrogeology and sanitary landfill engineering. A written acknowledgment that the application package is in compliance with the requirements of this part and rules promulgated under this part by the persons qualified in hydrogeology and sanitary landfill engineering shall be received before a construction permit is issued. If the consistency review of the site and the plans and the application meet the requirements of this part and the rules promulgated under this part, the department shall issue a construction permit that may contain a stipulation specifically applicable to the site and operation. Except as otherwise provided in section 11542, an expansion of the area of a disposal area, an enlargement in capacity of a disposal area, or an alteration of a disposal area to a different type of disposal area than had been specified in the previous construction permit application constitutes a new proposal for which a new construction permit is required. The upgrading of a disposal area type required by the department to comply with this part or the rules promulgated under this part or to comply with a consent order does not require a new construction permit.

(e) Notify the Michigan aeronautics commission if the disposal area is a sanitary landfill that is a new site or a lateral extension or vertical expansion of an existing unit proposed to be located within 5 miles of a runway or a proposed runway extension contained in a plan approved by the Michigan aeronautics commission of an airport licensed and regulated by the Michigan aeronautics commission. The department shall make a copy of the application available to the Michigan aeronautics commission. If, after a period of time for review and comment not to exceed 60 days, the Michigan aeronautics commission informs the department that it finds that operation of the proposed disposal area would present a potential hazard to air navigation and presents the basis for its findings, the department may either recommend appropriate changes in the location, construction, or operation of the proposed disposal area or deny the application for a construction permit. The department shall give an applicant an opportunity to rebut a finding of the Michigan aeronautics commission that the operation of a proposed disposal area would present a potential hazard to air navigation. The Michigan aeronautics commission shall notify the department and the owner or operator of a landfill if the Michigan aeronautics commission is considering approving a plan that would provide for a runway or the extension of a runway within 5 miles of a landfill.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 1998, Act 397, Imd. Eff. Dec. 17, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11511 Construction permit; approval or denial of issuance; expiration; renewal; fee; additional relevant information; conditions to issuance of construction permit for disposal area.

Sec. 11511. (1) The department shall notify the clerk of the municipality in which the disposal area is proposed to be located and the applicant of its approval or denial of an application for a construction permit within 10 days after the final decision is made.

(2) A construction permit shall expire 1 year after the date of issuance, unless development under the construction permit is initiated within that year. A construction permit that has expired may be renewed upon payment of a permit renewal fee and submission of any additional relevant information the department may require.

(3) Except as otherwise provided in this subsection, the department shall not issue a construction permit for

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a disposal area within a planning area unless a solid waste management plan for that planning area has been approved pursuant to sections 11536 and 11537 and unless the disposal area complies with and is consistent with the approved solid waste management plan. The department may issue a construction permit for a disposal area designed to receive ashes produced in connection with the combustion of fossil fuels for electrical power generation in the absence of an approved county solid waste management plan, upon receipt of a letter of approval from whichever county or counties, group of municipalities, or regional planning agency has prepared or is preparing the county solid waste management plan for that planning area under section 11533 and from the municipality in which the disposal area is to be located.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2011, Act 215, Imd. Eff. Nov. 10, 2011.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11511a Repealed. 2004, Act 38, Eff. Jan. 1, 2006.

Compiler's note: The repealed section pertained to permit to construct, modify, or expand landfill.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

****** 324.11511b THIS SECTION IS AMENDED EFFECTIVE APRIL 4, 2017: See 324.11511b.amended ******

324.11511b RDDP.

Sec. 11511b. (1) A person may submit to the department a project abstract for an RDDP. If, based on the project abstract, the director determines that the RDDP will provide beneficial data on alternative landfill design, construction, or operating methods, the person may apply for a construction permit under section 11509, including the renewal or modification of a construction permit, authorizing the person to establish the RDDP.

(2) An RDDP is subject to the same requirements, including, but not limited to, permitting, construction, licensing, operation, closure, postclosure, financial assurance, fees, and sanctions as apply to other type II landfills or landfill units under this part and the rules promulgated under this part, except as provided in this section.

(3) An extension of the processing period for an RDDP construction permit is not subject to the 20% limitation under section 1307.

(4) An application for an RDDP construction permit shall include, in addition to the applicable information required in other type II landfill construction permit applications, all of the following:

(a) A description of the RDDP goals.

(b) Details of the design, construction, and operation of the RDDP as necessary to ensure protection of human health and the environment. The design shall be at least as protective of human health and the environment as other designs that are required under this part and rules promulgated under this part.

(c) A list and discussion of the types of waste that will be disposed of, excluded, or added, including the types and amount of liquids that will be added under subsection (5) and how the addition will benefit the RDDP.

(d) A list and discussion of the types of compliance monitoring and operational monitoring that will be performed.

(e) Specific means to address potential nuisance conditions, including, but not limited to, odors and health concerns as a result of human contact.

(5) The department may authorize the addition of liquids, including, but not limited to, septage waste or other liquid waste, to solid waste in an RDDP if the applicant has demonstrated that the addition is necessary to accelerate or enhance the biostabilization of the solid waste and is not merely a means of disposal of the liquid. The department may require that the septage waste, or any other liquid waste, added to an RDDP originate within the county where the RDDP is located or any county contiguous to the county where the RDDP is located. If an RDDP is intended to accelerate or enhance biostabilization of solid waste, the construction permit application shall include, in addition to the requirements of subsection (4), all of the following:

(a) An evaluation of the potential for a decreased slope stability of the waste caused by any of the following:

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(*i*) Increased presence of liquids.

(*ii*) Accelerated degradation of the waste.

(*iii*) Increased gas pressure buildup.

(*iv*) Other relevant factors.

(b) An operations management plan that incorporates all of the following:

(*i*) A description of and the proportion and expected quantity of all components that are needed to accelerate or enhance biostabilization of the solid waste.

(*ii*) A description of any solid or liquid waste that may be detrimental to the biostabilization of the solid waste intended to be disposed of or to the RDDP goals.

(*iii*) An explanation of how the detrimental waste described in subparagraph (*ii*) will be prevented from being disposed of in cells approved for the RDDP.

(c) Parameters, such as moisture content, stability, gas production, and settlement, that will be used by the department to determine the beginning of the postclosure period for the RDDP under subsection (10).

(d) Information to ensure that the requirements of subsection (6) will be met.

(6) An RDDP shall meet all of the following requirements:

(a) Ensure that added liquids are evenly distributed and that side slope breakout of liquids is prevented.

(b) Ensure that daily cover practices or disposal of low permeability solid wastes does not adversely affect the free movement of liquids and gases within the waste mass.

(c) Include all of the following:

(*i*) A means to monitor the moisture content and temperature of the waste.

(*ii*) A leachate collection system of adequate size for the anticipated increased liquid production rates. The design's factor of safety shall take into account the anticipated increased operational temperatures and other factors as appropriate.

(*iii*) A means to monitor the depth of leachate on the liner.

(*iv*) An integrated active gas collection system. The system shall be of adequate size for the anticipated methane production rates and to control odors. The system shall be operational before the addition of any material to accelerate or enhance biostabilization of the solid waste.

(7) The owner or operator of an RDDP for which a construction permit has been issued shall submit a report to the director at least once every 12 months on the progress of the RDDP in achieving its goals. The report shall include a summary of all monitoring and testing results, as well as any other operating information specified by the director in the permit or in a subsequent permit modification or operating condition.

(8) A permit for an RDDP shall specify the term of the permit, which shall not exceed 3 years. However, the owner or operator of an RDDP may apply for and the department may grant an extension of the term of the permit, subject to all of the following requirements:

(a) The application to extend the term of the permit must be received by the department at least 90 days before the expiration of the permit.

(b) The application shall include a detailed assessment of the RDDP showing the progress of the RDDP in achieving its goals, a list of problems with the RDDP and progress toward resolving those problems, and other information that the director determines is necessary to accomplish the purposes of this part.

(c) If the department fails to make a final decision within 90 days of receipt of an administratively complete application for an extension of the term of a permit, the term of the permit is extended for 3 years.

(d) An individual extension shall not exceed 3 years, and the total term of the permit with all extensions shall not exceed 12 years.

(9) If the director determines that the overall goals of an RDDP, including, but not limited to, protection of human health or the environment, are not being achieved, the director may order immediate termination of all or part of the operations of the RDDP or may order other corrective measures.

(10) The postclosure period for a facility authorized as an RDDP begins when the department determines that the unit or portion of the unit where the RDDP was authorized has reached a condition similar to the condition that non-RDDP landfills would reach prior to postclosure. The parameters, such as moisture content, stability, gas production, and settlement, to attain this condition shall be specified in the permit. The perpetual care fund required under section 11525 shall be maintained for the period after final closure of the landfill as specified under section 11525.

(11) The director may authorize the conversion of an RDDP to a full-scale operation if the owner or operator of the RDDP demonstrates to the satisfaction of the director that the goals of the RDDP have been met and the authorization does not constitute a less stringent permitting requirement than is required under subtitle D of the solid waste disposal act, 42 USC 6941 to 6949a.

(12) As used in this section, "RDDP" means a research, development, and demonstration project for a new

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or existing type II landfill unit or for a lateral expansion of a type II landfill unit.

History: Add. 2005, Act 236, Imd. Eff. Nov. 22, 2005;—Am. 2011, Act 215, Imd. Eff. Nov. 10, 2011.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

****** 324.11511b.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 4, 2017 ******

324.11511b.amended RDDP.

Sec. 11511b. (1) A person may submit to the department a project abstract for an RDDP. If, based on the project abstract, the director determines that the RDDP will provide beneficial data on alternative landfill design, construction, or operating methods, the person may apply for a construction permit under section 11509, including the renewal or modification of a construction permit, authorizing the person to establish the RDDP.

(2) An RDDP is subject to the same requirements, including, but not limited to, permitting, construction, licensing, operation, closure, postclosure, financial assurance, fees, and sanctions as apply to other type II landfills or landfill units under this part and the rules promulgated under this part, except as provided in this section.

(3) An extension of the processing period for an RDDP construction permit is not subject to the limitations under section 1307.

(4) An application for an RDDP construction permit shall include, in addition to the applicable information required in other type II landfill construction permit applications, all of the following:

(a) A description of the RDDP goals.

(b) Details of the design, construction, and operation of the RDDP as necessary to ensure protection of human health and the environment. The design shall be at least as protective of human health and the environment as other designs that are required under this part and rules promulgated under this part.

(c) A list and discussion of the types of waste that will be disposed of, excluded, or added, including the types and amount of liquids that will be added under subsection (5) and how the addition will benefit the RDDP.

(d) A list and discussion of the types of compliance monitoring and operational monitoring that will be performed.

(e) Specific means to address potential nuisance conditions, including, but not limited to, odors and health concerns as a result of human contact.

(5) The department may authorize the addition of liquids, including, but not limited to, septage waste or other liquid waste, to solid waste in an RDDP if the applicant has demonstrated that the addition is necessary to accelerate or enhance the biostabilization of the solid waste and is not merely a means of disposal of the liquid. The department may require that the septage waste, or any other liquid waste, added to an RDDP originate within the county where the RDDP is located or any county contiguous to the county where the RDDP is located. If an RDDP is intended to accelerate or enhance biostabilization of solid waste, the construction permit application shall include, in addition to the requirements of subsection (4), all of the following:

(a) An evaluation of the potential for a decreased slope stability of the waste caused by any of the following:

(*i*) Increased presence of liquids.

(*ii*) Accelerated degradation of the waste.

(*iii*) Increased gas pressure buildup.

(*iv*) Other relevant factors.

(b) An operations management plan that incorporates all of the following:

(*i*) A description of and the proportion and expected quantity of all components that are needed to accelerate or enhance biostabilization of the solid waste.

(*ii*) A description of any solid or liquid waste that may be detrimental to the biostabilization of the solid waste intended to be disposed of or to the RDDP goals.

(*iii*) An explanation of how the detrimental waste described in subparagraph (*ii*) will be prevented from being disposed of in cells approved for the RDDP.

(c) Parameters, such as moisture content, stability, gas production, and settlement, that will be used by the department to determine the beginning of the postclosure period for the RDDP under subsection (10).

(d) Information to ensure that the requirements of subsection (6) will be met.

(6) An RDDP shall meet all of the following requirements:

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(a) Ensure that added liquids are evenly distributed and that side slope breakout of liquids is prevented.

(b) Ensure that daily cover practices or disposal of low permeability solid wastes does not adversely affect the free movement of liquids and gases within the waste mass.

(c) Include all of the following:

(*i*) A means to monitor the moisture content and temperature of the waste.

(*ii*) A leachate collection system of adequate size for the anticipated increased liquid production rates. The design's factor of safety shall take into account the anticipated increased operational temperatures and other factors as appropriate.

(*iii*) A means to monitor the depth of leachate on the liner.

(*iv*) An integrated active gas collection system. The system shall be of adequate size for the anticipated methane production rates and to control odors. The system shall be operational before the addition of any material to accelerate or enhance biostabilization of the solid waste.

(7) The owner or operator of an RDDP for which a construction permit has been issued shall submit a report to the director at least once every 12 months on the progress of the RDDP in achieving its goals. The report shall include a summary of all monitoring and testing results, as well as any other operating information specified by the director in the permit or in a subsequent permit modification or operating condition.

(8) A permit for an RDDP shall specify the term of the permit, which shall not exceed 3 years. However, the owner or operator of an RDDP may apply for and the department may grant an extension of the term of the permit, subject to all of the following requirements:

(a) The application to extend the term of the permit must be received by the department at least 90 days before the expiration of the permit.

(b) The application shall include a detailed assessment of the RDDP showing the progress of the RDDP in achieving its goals, a list of problems with the RDDP and progress toward resolving those problems, and other information that the director determines is necessary to accomplish the purposes of this part.

(c) If the department fails to make a final decision within 90 days of receipt of an administratively complete application for an extension of the term of a permit, the term of the permit is extended for 3 years.

(d) An individual extension shall not exceed 3 years, and the total term of the permit with all extensions shall not exceed 21 years.

(9) If the director determines that the overall goals of an RDDP, including, but not limited to, protection of human health or the environment, are not being achieved, the director may order immediate termination of all or part of the operations of the RDDP or may order other corrective measures.

(10) The postclosure period for a facility authorized as an RDDP begins when the department determines that the unit or portion of the unit where the RDDP was authorized has reached a condition similar to the condition that non-RDDP landfills would reach prior to postclosure. The parameters, such as moisture content, stability, gas production, and settlement, to attain this condition shall be specified in the permit. The perpetual care fund required under section 11525 shall be maintained for the period after final closure of the landfill as specified under section 11525.

(11) The director may authorize the conversion of an RDDP to a full-scale operation if the owner or operator of the RDDP demonstrates to the satisfaction of the director that the goals of the RDDP have been met and the authorization does not constitute a less stringent permitting requirement than is required under subtitle D of the solid waste disposal act, 42 USC 6941 to 6949a.

(12) As used in this section, "RDDP" means a research, development, and demonstration project for a new or existing type II landfill unit or for a lateral expansion of a type II landfill unit.

History: Add. 2005, Act 236, Imd. Eff. Nov. 22, 2005;—Am. 2011, Act 215, Imd. Eff. Nov. 10, 2011;—Am. 2016, Act 437, Eff. Apr. 4, 2017.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11512 Disposal of solid waste at licensed disposal area; license required to conduct, manage, maintain, or operate disposal area; application; contents; fee; certification; resubmitting application; additional information or corrections; operation of incinerator without operating license; additional fees.

Sec. 11512. (1) A person shall dispose of solid waste at a disposal area licensed under this part unless a person is permitted by state law or rules promulgated by the department to dispose of the solid waste at the site of generation.

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(2) Except as otherwise provided in this section or in section 11529, a person shall not conduct, manage, maintain, or operate a disposal area within this state except as authorized by an operating license issued by the department pursuant to part 13. In addition, a person shall not conduct, manage, maintain, or operate a disposal area contrary to an approved solid waste management plan, or contrary to a permit, license, or final order issued under this part. A person who intends to conduct, manage, maintain, or operate a disposal area shall submit a license application to the department through a certified health department. If the disposal area is located in a county or city that does not have a certified health department, the application shall be made directly to the department. A person authorized by this part to operate more than 1 type of disposal area at the same facility may apply for a single license.

(3) The application for a license shall contain the name and residence of the applicant, the location of the proposed or existing disposal area, the type or types of disposal area proposed, evidence of bonding, and other information required by rule. In addition, an applicant for a type II landfill shall submit evidence of financial assurance adequate to meet the requirements of section 11523a, the maximum waste slope in the active portion, an estimate of remaining permitted capacity, and documentation on the amount of waste received at the disposal area during the previous license period or expected to be received, whichever is greater. The application shall be accompanied by a fee as specified in subsections (7), (9), and (10).

(4) At the time of application for a license for a disposal area, the applicant shall submit to a health officer or the department a certification under the seal of a licensed professional engineer verifying that the construction of the disposal area has proceeded according to the approved plans. If construction of the disposal area or a portion of the disposal area is not complete, the department shall require additional construction certification of that portion of the disposal area during intermediate progression of the operation, as specified in section 11516(5).

(5) An applicant for an operating license, within 6 months after a license denial, may resubmit the application, together with additional information or corrections as are necessary to address the reason for denial, without being required to pay an additional application fee.

(6) In order to conduct tests and assess operational capabilities, the owner or operator of a municipal solid waste incinerator that is designed to burn at a temperature in excess of 2500 degrees Fahrenheit may operate the incinerator without an operating license, upon notice to the department, for a period not to exceed 60 days.

(7) The application for a type II landfill operating license shall be accompanied by the following fee for the 5-year term of the operating license, calculated in accordance with subsection (8):

(a) Landfills receiving less than 100 tons per day, $250.00.

(b) Landfills receiving 100 tons per day or more, but less than 250 tons per day, $1,000.00.

(c) Landfills receiving 250 tons per day or more, but less than 500 tons per day, $2,500.00.

(d) Landfills receiving 500 tons per day or more, but less than 1,000 tons per day, $5,000.00.

(e) Landfills receiving 1,000 tons per day or more, but less than 1,500 tons per day, $10,000.00.

(f) Landfills receiving 1,500 tons per day or more, but less than 3,000 tons per day, $20,000.00.

(g) Landfills receiving greater than 3,000 tons per day, $30,000.00.

(8) Type II landfill application fees shall be based on the average amount of waste projected to be received daily during the license period. Application fees for license renewals shall be based on the average amount of waste received in the previous calendar year. Application fees shall be adjusted in the following circumstances:

(a) If a landfill accepts more waste than projected, a supplemental fee equal to the difference shall be submitted with the next license application.

(b) If a landfill accepts less waste than projected, the department shall credit the applicant an amount equal to the difference with the next license application.

(c) A type II landfill that measures waste by volume rather than weight shall pay a fee based on 3 cubic yards per ton.

(d) A landfill used exclusively for municipal solid waste incinerator ash that measures waste by volume rather than weight shall pay a fee based on 1 cubic yard per ton.

(e) If an application is submitted to renew a license more than 1 year prior to license expiration, the department shall credit the applicant an amount equal to 1/2 the application fee.

(f) If an application is submitted to renew a license more than 6 months but less than 1 year prior to license expiration, the department shall credit the applicant an amount equal to 1/4 the application fee.

(9) The operating license application for a type III landfill shall be accompanied by a fee equal to $2,500.00.

(10) The operating license application for a solid waste processing plant, solid waste transfer facility, other disposal area, or combination of these entities shall be accompanied by a fee equal to $500.00.

(11) The department shall deposit operating license application fees collected under this section in the

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perpetual care account of the solid waste management fund established in section 11550.

(12) A person who applies for an operating license for more than 1 type of disposal area at the same facility shall pay a fee equal to the sum of the applicable application fees listed in this section.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2003, Act 153, Eff. Oct. 1, 2003;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11513 Acceptance of solid waste or municipal solid waste incinerator ash for disposal; enforcement.

Sec. 11513. A person shall not accept for disposal solid waste or municipal solid waste incinerator ash that is not generated in the county in which the disposal area is located unless the acceptance of solid waste or municipal solid waste incinerator ash that is not generated in the county is explicitly authorized in the approved county solid waste management plan. The department shall take action to enforce this section within 30 days of obtaining knowledge of a violation of this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11514 Promotion of recycling and reuse of materials; electronics recycling; materials prohibited from disposal in landfill; disposal of yard clippings; report.

Sec. 11514. (1) Optimizing recycling opportunities, including electronics recycling opportunities, and the reuse of materials shall be a principal objective of the state's solid waste management plan. Recycling and reuse of materials, including the reuse of materials from electronic devices, are in the best interest of promoting the public health and welfare. The state shall develop policies and practices that promote recycling and reuse of materials and, to the extent practical, minimize the use of landfilling as a method for disposal of its waste. Policies and practices that promote recycling and reuse of materials, including materials from electronic devices, will conserve raw materials, conserve landfill space, and avoid the contamination of soil and groundwater from heavy metals and other pollutants.

(2) A person shall not knowingly deliver to a landfill for disposal, or, if the person is an owner or operator of a landfill, knowingly permit disposal in the landfill of, any of the following:

(a) Medical waste, unless that medical waste has been decontaminated or is not required to be decontaminated but is packaged in the manner required under part 138 of the public health code, 1978 PA 368, MCL 333.13801 to 333.13831.

(b) More than a de minimis amount of open, empty, or otherwise used beverage containers.

(c) More than a de minimis number of whole motor vehicle tires.

(d) More than a de minimis amount of yard clippings, unless they are diseased, infested, or composed of invasive species as authorized by section 11521(1)(i).

(3) A person shall not deliver to a landfill for disposal, or, if the person is an owner or operator of a landfill, permit disposal in the landfill of, any of the following:

(a) Used oil as defined in section 16701.

(b) A lead acid battery as defined in section 17101.

(c) Low-level radioactive waste as defined in section 2 of the low-level radioactive waste authority act, 1987 PA 204, MCL 333.26202.

(d) Regulated hazardous waste as defined in R 299.4104 of the Michigan administrative code.

(e) Bulk or noncontainerized liquid waste or waste that contains free liquids, unless the waste is 1 of the following:

(*i*) Household waste other than septage waste.

(*ii*) Leachate or gas condensate that is approved for recirculation.

(*iii*) Septage waste or other liquids approved for beneficial addition under section 11511b.

(f) Sewage.

(g) PCBs as defined in 40 CFR 761.3.

(h) Asbestos waste, unless the landfill complies with 40 CFR 61.154.

(4) A person shall not knowingly deliver to a municipal solid waste incinerator for disposal, or, if the person is an owner or operator of a municipal solid waste incinerator, knowingly permit disposal in the

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incinerator of, more than a de minimis amount of yard clippings, unless they are diseased, infested, or composed of invasive species as authorized by section 11521(1)(i). The department shall post, and a solid waste hauler that disposes of solid waste in a municipal solid waste incinerator shall provide its customers with, notice of the prohibitions of this subsection in the same manner as provided in section 11527a.

(5) If the department determines that a safe, sanitary, and feasible alternative does not exist for the disposal in a landfill or municipal solid waste incinerator of any items described in subsection (2) or (4), respectively, the department shall submit a report setting forth that determination and the basis for the determination to the standing committees of the senate and house of representatives with primary responsibility for solid waste issues.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 34, Imd. Eff. Mar. 29, 2004;—Am. 2005, Act 243, Imd. Eff. Nov. 22, 2005;—Am. 2007, Act 212, Eff. Mar. 26, 2008;—Am. 2008, Act 394, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11515 Inspection of site; compliance; hydrogeologic monitoring program as condition to licensing landfill facility; determining course of action; revocation of license; issuance of timetable or schedule.

Sec. 11515. (1) Upon receipt of a license application, the department or a health officer or an authorized representative of a health officer shall inspect the site and determine if the proposed operation complies with this part and the rules promulgated under this part.

(2) The department shall not license a landfill facility operating without an approved hydrogeologic monitoring program until the department receives a hydrogeologic monitoring program and the results of the program. The department shall use this information in conjunction with other information required by this part or the rules promulgated under this part to determine a course of action regarding licensing of the facility consistent with section 4005 of subtitle D of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6945, and with this part and the rules promulgated pursuant to this part. In deciding a course of action, the department shall consider, at a minimum, the health hazards, environmental degradation, and other public or private alternatives. The department may revoke a license or issue a timetable or schedule to provide for compliance for the facility or operation, specifying a schedule of remedial measures, including a sequence of actions or operations, which leads to compliance with this part within a reasonable time period but not later than December 2, 1987.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11516 Final decision on license application; time; effect of failure to make final decision; expiration and renewal of operating license; fee; entry on private or public property; inspection or investigation; conditions to issuance of operating license for new disposal area; issuance of license as authority to accept waste for disposal.

Sec. 11516. (1) The department shall conduct a consistency review before making a final decision on a license application. The department shall notify the clerk of the municipality in which the disposal area is located and the applicant of its approval or denial of a license application within 10 days after the final decision is made.

(2) An operating license shall expire 5 years after the date of issuance. An operating license may be renewed before expiration upon payment of a renewal application fee specified in section 11512(8) if the licensee is in compliance with this part and the rules promulgated under this part.

(3) The issuance of the operating license under this part empowers the department or a health officer or an authorized representative of a health officer to enter at any reasonable time, pursuant to law, in or upon private or public property licensed under this part for the purpose of inspecting or investigating conditions relating to the storage, processing, or disposal of any material.

(4) Except as otherwise provided in this subsection, the department shall not issue an operating license for a new disposal area within a planning area unless a solid waste management plan for that planning area has been approved pursuant to sections 11536 and 11537 and unless the disposal area complies with and is consistent with the approved solid waste management plan. The department may issue an operating license for a disposal area designed to receive ashes produced in connection with the combustion of fossil fuels for

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electrical power generation in the absence of an approved county solid waste management plan, upon receipt of a letter of approval from whichever county or counties, group of municipalities, or regional planning agency has prepared or is preparing the county solid waste management plan for that planning area under section 11533 and from the municipality in which the disposal area is to be located.

(5) Issuance of an operating license by the department authorizes the licensee to accept waste for disposal in certified portions of the disposal area for which a bond was established under section 11523 and, for type II landfills, for which financial assurance was demonstrated under section 11523a. If the construction of a portion of a landfill licensed under this section is not complete at the time of license application, the owner or operator of the landfill shall submit a certification under the seal of a licensed professional engineer verifying that the construction of that portion of the landfill has proceeded according to the approved plans at least 60 days prior to the anticipated date of waste disposal in that portion of the landfill. If the department does not deny the certification within 60 days of receipt, the owner or operator may accept waste for disposal in the certified portion. In the case of a denial, the department shall issue a written statement stating the reasons why the construction or certification is not consistent with this part or rules promulgated under this part or the approved plans.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2003, Act 153, Eff. Oct. 1, 2003;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11517 Plan for program reducing incineration of noncombustible materials and dangerous combustible materials and other hazardous by-products; approval or disapproval; considerations; modifications; revised plan; implementation; operation without approved plan.

Sec. 11517. (1) Within 9 months after the completion of construction of a municipal solid waste incinerator, the owner or operator of a municipal solid waste incinerator shall submit a plan to the department for a program that, to the extent practicable, reduces the incineration of noncombustible materials and dangerous combustible materials and their hazardous by-products at the incinerator. The department shall approve or disapprove the plan submitted under this subsection within 30 days after receiving it. In reviewing the plan, the department shall consider the current county solid waste management plan, available markets for separated materials, disposal alternatives for the separated materials, and collection practices for handling such separated materials. If the department disapproves a plan, the department shall notify the owner or operator submitting the plan of this fact, and shall provide modifications that, if included, would result in the plan's approval. If the department disapproves a plan, the owner or operator of a municipal solid waste incinerator shall within 30 days after receipt of the department's disapproval submit a revised plan that addresses all of the modifications provided by the department. The department shall approve or disapprove the revised plan within 30 days after receiving it, and approval of the revised plan shall not be unreasonably withheld.

(2) Not later than 6 months after the approval of the plan by the department under subsection (1), the owner or operator shall implement the plan in accordance with the implementation schedule set forth in the plan. The operation of a municipal solid waste incinerator without an approved plan under this section shall subject the owner or operator, or both, to all of the sanctions provided by this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11518 Sanitary landfill; instrument imposing restrictive covenant on land; filing; contents of covenant; authorization; special exemption; construction of part.

Sec. 11518. (1) At the time a disposal area that is a sanitary landfill is licensed, an instrument that imposes a restrictive covenant upon the land involved shall be executed by all of the owners of the tract of land upon which the landfill is to be located and the department. If the land involved is state owned, the state administrative board shall execute the covenant on behalf of the state. The instrument imposing the restrictive covenant shall be filed for record by the department or a health officer in the office of the register of deeds of the county, or counties, in which the facility is located. The covenant shall state that the land described in the covenant has been or will be used as a landfill and that neither the property owners, their servants, agents, or

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employees, nor any of their heirs, successors, lessees, or assigns shall engage in filling, grading, excavating, drilling, or mining on the property during the first 50 years following completion of the landfill without authorization of the department. In giving authorization, the department shall consider the original design, type of operation, material deposited, and the stage of decomposition of the fill. Special exemption from this section may be granted by the department if the lands involved are federal lands or if contracts existing between the landowner and the licensee on January 11, 1979 are not renegotiable.

(2) This part does not prohibit the department from conveying, leasing, or permitting the use of state land for a solid waste disposal area or a resource recovery facility as provided by applicable state law.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11519 Specifying reasons for denial of construction permit or operating license; cease and desist order; grounds for order revoking, suspending, or restricting permit or license; contested case hearing; judicial review; inspection; report; copies; violation of part or rules; summary suspension of permit or license.

Sec. 11519. (1) The department shall specify, in writing, the reasons for denial of a construction permit or an operating license, further specifying those particular sections of this part or rules promulgated under this part that may be violated by granting the application and the manner in which the violation may occur.

(2) The health officer or department may issue a cease and desist order specifying a schedule of closure or remedial action in accordance with this part and rules promulgated under this part or may establish a consent agreement specifying a schedule of closure or remedial action in accordance with this part and rules promulgated under this part to a person who establishes, constructs, conducts, manages, maintains, or operates a disposal area without a permit or license or to a person who holds a permit or license but establishes, constructs, conducts, manages, maintains, or operates a disposal area contrary to an approved solid waste management plan or contrary to the permit or license issued under this part.

(3) The department may issue a final order revoking, suspending, or restricting a permit or license after a contested case hearing as provided in the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969 , being sections 24.201 to 24.328 of the Michigan Compiled Laws, if the department finds that the disposal area is not being constructed or operated in accordance with the approved plans, the conditions of a permit or license, this part, or the rules promulgated under this part. A final order issued pursuant to this section is subject to judicial review as provided in Act No. 306 of the Public Acts of 1969. The department or a health officer shall inspect and file a written report not less than 4 times per year for each licensed disposal area. The department or the health officer shall provide the municipality in which the licensed disposal area is located with a copy of each written inspection report if the municipality arranges with the department or the health officer to bear the expense of duplicating and mailing the reports.

(4) The department may issue an order summarily suspending a permit or license if the department determines that a violation of this part or rules promulgated under this part has occurred which, in the department's opinion, constitutes an emergency or poses an imminent risk of injury to the public health or the environment. A determination that a violation poses an imminent risk of injury to the public health shall be made by the department. Summary suspension may be ordered effective on the date specified in the order or upon service of a certified copy of the order on the licensee, whichever is later, and shall remain effective during the proceedings. The proceedings shall be commenced within 7 days of the issuance of the order and shall be promptly determined.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11520 Disposition of fees; special fund; disposition of solid waste on private property.

Sec. 11520. (1) Fees collected by a health officer under this part shall be deposited with the city or county treasurer, who shall keep the deposits in a special fund designated for use in implementing this part. If there is an ordinance or charter provision that prohibits a health officer from maintaining a special fund, the fees shall be deposited and used in accordance with the ordinance or charter provision. Fees collected by the department under this part shall be credited to the general fund of the state.

(2) This part does not prohibit an individual from disposing of solid waste from the individual's own

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household upon the individual's own land as long as the disposal does not create a nuisance or hazard to health. Solid waste accumulated as a part of an improvement or the planting of privately owned farmland may be disposed of on the property if the method used is not injurious to human life or property and does not unreasonably interfere with the enjoyment of life or property.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11521 Yard clippings; management; means; temporary accumulation; requirements; composting on farm; qualification as registered composting facility; site at which yard clippings are managed.

Sec. 11521. (1) Yard clippings shall be managed by 1 of the following means:

(a) Composted on the property where the yard clippings are generated.

(b) Temporarily accumulated under subsection (2).

(c) Composted at a composting facility containing not more than 200 cubic yards of yard clippings if decomposition occurs without creating a nuisance.

(d) Composted on a farm as described by subsection (3).

(e) Composted at site that qualifies as a registered composting facility under subsection (4).

(f) Decomposed in a controlled manner using a closed container to create and maintain anaerobic conditions if in compliance with part 55 and otherwise approved by the director under this part.

(g) Composted and used as part of normal operations by a municipal solid waste landfill if the composting and use meet all of the following requirements:

(*i*) Take place on property described in the landfill construction permit.

(*ii*) Are described in and consistent with the landfill operation plans.

(*iii*) Are otherwise in compliance with this act.

(h) Processed at a processing plant in accordance with this part and the rules promulgated under this part.

(i) Disposed of in a landfill or an incinerator, but only if the yard clippings are diseased or infested or are composed of invasive plants, such as garlic mustard, purple loosestrife, or spotted knapweed, that were collected through an eradication or control program, include no more than a de minimis amount of other yard clippings, and are inappropriate to compost.

(2) A person may temporarily accumulate yard clippings at a site not designed for composting if all of the following requirements are met:

(a) The accumulation does not create a nuisance or otherwise result in a violation of this act.

(b) The yard clippings are not mixed with other compostable materials.

(c) No more than 1,000 cubic yards are placed on site unless a greater volume is approved by the department.

(d) Yard clippings placed on site on or after April 1 but before December 1 are moved to another location and managed as provided in subsection (1) within 30 days after being placed on site. The director may approve a longer time period based on a demonstration that additional time is necessary.

(e) Yard clippings placed on site on or after December 1 but before the next April 1 are moved to another location and managed as provided in subsection (1) by the next April 10 after the yard clippings are placed on site.

(f) The owner or operator of the site maintains and makes available to the department records necessary to demonstrate that the requirements of this subsection are met.

(3) A person may compost yard clippings on a farm if composting does not otherwise result in a violation of this act and is done in accordance with generally accepted agricultural and management practices under the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474, and if 1 or more of the following apply:

(a) Only yard clippings generated on the farm are composted.

(b) There are not more than 5,000 cubic yards of yard clippings on the farm.

(c) If there are more than 5,000 cubic yards of yard clippings on the farm at any time, all of the following requirements are met:

(*i*) The farm operation accepts yard clippings generated at a location other than the farm only to assist in management of waste material generated by the farm operation.

(*ii*) The farm operation does not accept yard clippings generated at a location other than the farm for monetary or other valuable consideration.

(*iii*) The owner or operator of the farm registers with the department of agriculture on a form provided by

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the department of agriculture and certifies that the farm operation meets and will continue to meet the requirements of subparagraphs (*i*) and (*ii*).

(4) A site qualifies as a registered composting facility if all of the following requirements are met:

(a) The owner or operator of the site registers as a composting facility with the department and reports to the department within 30 days after the end of each state fiscal year the amount of yard clippings and other compostable material composted in the previous state fiscal year. The registration and reporting shall be done on forms provided by the department. The registration shall be accompanied by a fee of $600.00. The registration is for a term of 3 years. Registration fees collected under this subdivision shall be forwarded to the state treasurer for deposit in the solid waste staff account of the solid waste management fund established in section 11550.

(b) The site is operated in compliance with the following location restrictions:

(*i*) If the site is in operation on December 1, 2007, the management or storage of yard clippings, compost, and residuals does not expand from its location on that date to an area that is within the following distances from any of the following features:

(A) 50 feet from a property line.

(B) 200 feet from a residence.

(C) 100 feet from a body of surface water, including a lake, stream, or wetland.

(*ii*) If the site begins operation after December 1, 2007, the management or storage of yard clippings, compost, and residuals occurs in an area that is not in the 100-year floodplain and is at least the following distances from each of the following features:

(A) 50 feet from a property line.

(B) 200 feet from a residence.

(C) 100 feet from a body of surface water, including a lake, stream, or wetland.

(D) 2,000 feet from a type I or type IIA water supply well.

(E) 800 feet from a type IIB or type III water supply well.

(F) 500 feet from a church or other house of worship, hospital, nursing home, licensed day care center, or school, other than a home school.

(G) 4 feet above groundwater.

(c) Composting and management of the site occurs in a manner that meets all of the following requirements:

(*i*) Does not violate this act or create a facility as defined in section 20101.

(*ii*) Unless approved by the department, does not result in more than 5,000 cubic yards of yard clippings and other compostable material, compost, and residuals present on any acre of property at the site.

(*iii*) Does not result in an accumulation of yard clippings for a period of over 3 years unless the site has the capacity to compost the yard clippings and the owner or operator of the site can demonstrate, beginning in the third year of operation and each year thereafter, unless a longer time is approved by the director, that the amount of yard clippings and compost that is transferred off-site in a calendar year is not less than 75% by weight or volume, accounting for natural volume reduction, of the amount of yard clippings and compost that was on-site at the beginning of the calendar year.

(*iv*) Results in finished compost with not more than 1%, by weight, of foreign matter that will remain on a 4 millimeter screen.

(*v*) If yard clippings are collected in bags other than paper bags, debags the yard clippings by the end of each business day.

(*vi*) Prevents the pooling of water by maintaining proper slopes and grades.

(*vii*) Properly manages storm water runoff.

(*viii*) Does not attract or harbor rodents or other vectors.

(d) The owner or operator maintains, and makes available to the department, all of the following records:

(*i*) Records identifying the volume of yard clippings and other compostable material accepted by the facility and the volume of yard clippings and other compostable material and of compost transferred off-site each month.

(*ii*) Records demonstrating that the composting operation is being performed in a manner that prevents nuisances and minimizes anaerobic conditions. Unless other records are approved by the department, these records shall include records of carbon-to-nitrogen ratios, the amount of leaves and the amount of grass in tons or cubic yards, temperature readings, moisture content readings, and lab analysis of finished products.

(5) A site at which yard clippings are managed in accordance with this section, other than a site described in subsection (1)(g), (h) or (i), is not a disposal area, notwithstanding section 11503(5).

(6) Except with respect to subsection (1)(h) and (i), management of yard clippings in accordance with this section is not considered disposal for purposes of section 11538(6).

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History: Add. 2007, Act 212, Eff. Mar. 26, 2008.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11521b Operator of waste diversion center; duties; requirements; disposal; rejection of diverted waste.

Sec. 11521b. (1) The operator of a waste diversion center shall comply with all of the following requirements:

(a) At least 90%, by volume, of the material collected at the waste diversion center shall consist of diverted waste to be managed at the waste diversion center.

(b) The waste diversion center shall be operated by personnel who are knowledgeable about the safe management of the types of diverted waste that are accepted at the waste diversion center.

(c) The operator shall manage the diverted waste in a manner that prevents the release of any diverted waste or component of diverted waste to the environment.

(d) The operator shall not store diverted waste overnight at the waste diversion center except in a secure location and with adequate containment to prevent any release of diverted wastes.

(e) Within 1 year after diverted waste is collected by the waste diversion center, that diverted waste shall be transported from the waste diversion center to a waste diversion center, recycling facility, or disposal facility that is in compliance with this act, for processing, recycling, or disposal.

(f) The operator shall not process diverted waste except to the extent necessary for the safe and efficient transportation of the diverted waste.

(g) The operator shall record the types and quantities of diverted wastes collected, the period of storage, and where the diverted wastes were transferred, processed, recycled, or disposed of. The operator shall maintain the records for at least 3 years and shall make the records available to the department upon request.

(h) Access to the waste diversion center shall be limited to a time when a responsible individual is on duty.

(i) The area where the diverted waste is accumulated shall be protected, as appropriate for the type of waste, from weather, fire, physical damage, and vandals.

(j) The waste diversion center shall be kept clean and free of litter.

(2) Management of diverted wastes as required by this section is not considered disposal for the purposes of section 11538(6).

(3) The operator of a waste diversion center may reject any diverted waste.

History: Add. 2014, Act 24, Imd. Eff. Mar. 4, 2014.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11522 Open burning of grass clippings or leaves; open burning of household waste; materials; violation; extension of prohibition to materials not listed in subsection (3); open burning of wooden fruit or vegetable storage bins constructed from untreated lumber; requirements; effect of local ordinance; burning of United States flag.

Sec. 11522. (1) The open burning of grass clippings or leaves is prohibited in any municipality having a population of 7,500 or more, unless specifically authorized by local ordinance, which ordinance shall be reported to the department of natural resources within 30 days of enactment.

(2) Subsection (1) does not permit a county or municipality to authorize open burning of grass clippings or leaves by an ordinance that would otherwise be prohibited under part 55 or rules promulgated under that part.

(3) Beginning 180 days after the effective date of the amendatory act that added this subsection, a person shall not conduct open burning of household waste that contains plastic, rubber, foam, chemically treated wood, textiles, electronics, chemicals, or hazardous materials.

(4) Sections 11546 and 11549 do not apply to an individual who violates subsection (3) by open burning of waste from that individual's household. Such an individual is responsible for a state civil infraction and is subject to the following:

(a) For a first offense within a 3-year period, a warning by the judge or magistrate.

(b) For a second offense within a 3-year period, a civil fine of not more than $75.00.

(c) For a third offense within a 3-year period, a civil fine of not more than $150.00.

(d) For a fourth or subsequent offense within a 3-year period, a civil fine of not more than $300.00.

(5) Notwithstanding section 5512, the department shall not promulgate or enforce a rule that extends the

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prohibition under subsection (3) to materials not listed in subsection (3).

(6) This part, part 55, or rules promulgated under this part or part 55 do not prohibit a person from conducting open burning of wooden fruit or vegetable storage bins constructed from untreated lumber if all of the following requirements are met:

(a) The burning is conducted for disease or pest control.

(b) The burning is not conducted at any of the following locations:

(*i*) Within a priority I area as listed in table 33 or a priority II area as listed in table 34 of R 336.1310 of the Michigan administrative code.

(*ii*) In a city or village.

(*iii*) Within 1,400 feet outside the boundary of a city or village.

(7) Subsections (5) and (6) do not authorize open burning that is prohibited by a local ordinance.

(8) A congressionally chartered patriotic organization that disposes of an unserviceable flag of the United States by burning that flag is not subject to regulation or penalty for violating a state law or local ordinance pertaining to open burning of materials or substances.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2012, Act 102, Imd. Eff. Apr. 19, 2012.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11523 Financial assurance; cash bond; interest; reduction in bond; termination; noncompliance with closure and postclosure monitoring and maintenance requirements; expiration or cancellation notice; effect of bankruptcy action; perpetual care fund; alternate financial assurance.

Sec. 11523. (1) The department shall not issue a license to operate a disposal area unless the applicant has filed, as a part of the application for a license, evidence of the following financial assurance:

(a) Financial assurance established for a type III landfill or a preexisting unit at a type II landfill and until April 9, 1997, existing and new type II landfills shall be in the form of a bond in an amount equal to $20,000.00 per acre of licensed landfill within the solid waste boundary. However, the amount of the bond shall not be less than $20,000.00 or more than $1,000,000.00. Each bond shall provide assurance for the maintenance of the finished landfill site for a period of 30 years after the landfill or any approved portion is completed. In addition to this bond, a perpetual care fund shall be maintained under section 11525.

(b) Financial assurance for a type II landfill that is an existing unit or a new unit shall be in an amount equal to the cost, in current dollars, of hiring a third party, to conduct closure, postclosure maintenance and monitoring, and if necessary, corrective action. An application for a type II landfill that is an existing unit or new unit shall demonstrate financial assurance in accordance with section 11523a.

(c) Financial assurance established for a solid waste transfer facility, incinerator, processing plant, other solid waste handling or disposal facility, or a combination of these utilized in the disposal of solid waste shall be in the form of a bond in an amount equal to 1/4 of 1% of the construction cost of the facility, but shall not be less than $4,000.00, and shall be continued in effect for a period of 2 years after the disposal area is closed.

(2) The owner or operator of a landfill may post a cash bond with the department instead of other bonding mechanisms to fulfill the remaining financial assurance requirements of this section. An owner or operator of a disposal area who elects to post cash as a bond shall accrue interest on that bond at the annual rate of 6%, to be accrued quarterly, except that the interest rate payable to an owner or operator shall not exceed the rate of interest accrued on the state common cash fund for the quarter in which an accrual is determined. Interest shall be paid to the owner or operator upon release of the bond by the department. Any interest greater than 6% shall be deposited in the state treasury to the credit of the general fund and shall be appropriated to the department to be used by the department for administration of this part.

(3) An owner or operator of a disposal area that is not a landfill who has accomplished closure in a manner approved by the department and in accordance with this part and the rules promulgated under this part, may request a 50% reduction in the bond during the 2-year period after closure. At the end of the 2-year period, the owner or operator may request that the department terminate the bond. The department shall approve termination of the bond within 60 days after the request is made if all waste and waste residues have been removed from the disposal area and closure is certified.

(4) The department may utilize a bond required under this section for the closure and postclosure monitoring and maintenance of a disposal area if the owner or operator fails to comply with the closure and postclosure monitoring and maintenance requirements of this part and the rules promulgated under this part to the extent necessary to correct such violations. At least 7 days before utilizing the bond, the department shall

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issue a notice of violation or other order that alleges violation of this part or rules promulgated under this part and provide an opportunity for a hearing. This subsection does not apply to a perpetual care fund bond.

(5) Under the terms of a surety bond, letter of credit, insurance policy, or perpetual care fund bond, the issuing institution shall notify both the department and the owner or operator at least 120 days before the expiration date or any cancellation of the bond. If the owner or operator does not extend the effective date of the bond, or establish alternate financial assurance within 90 days after receipt of an expiration or cancellation notice from the issuing institution, all of the following apply:

(a) The department may draw on the bond.

(b) In the case of a perpetual care fund bond, the issuing institution shall deposit the proceeds into the standby trust or escrow account unless the department agrees to the expiration or cancellation of the perpetual care fund bond.

(6) The department shall not issue a construction permit or a new license to operate a disposal area to an applicant that is the subject of a bankruptcy action commenced under title 11 of the United States Code, 11 USC 101 to 1532, or any other predecessor or successor statute.

(7) A person required under this section to provide financial assurance in the form of a bond for a landfill may request a reduction in the bond based upon the amount of the perpetual care fund established under section 11525. A person requesting a bond reduction shall do so on a form consistent with this part and provided by the department. The department shall grant this request unless there are sufficient grounds for denial and those reasons are provided in writing. The department shall grant or deny a request for a reduction of the bond within 60 days after the request is made. If the department grants a request for a reduced bond, the department shall require a bond in an amount such that for type III landfills, and type II landfills that are preexisting units, the amount of the perpetual care fund plus the amount of the reduced bond equals the maximum amount required in a perpetual care fund in section 11525(2).

(8) The department shall release the bond required by this section if the amount of the perpetual care fund exceeds the amount of the financial assurance required under subsection (1).

(9) Prior to closure of a landfill, if money is disbursed from the perpetual care fund, then the department may require a corresponding increase in the amount of bonding required to be provided if necessary to meet the requirements of this section.

(10) If an owner or operator of a disposal area fulfills the financial assurance requirements of this part by obtaining a bond, including, but not limited to, a perpetual care fund bond, and the surety company, insurer, trustee, bank, or financial or other institution that issued or holds the bond becomes the subject of a bankruptcy action or has its authority to issue or hold the bond or to act as an escrow agent or trustee suspended or revoked, the owner or operator shall, within 60 days after receiving notice of that event, establish alternate financial assurance under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 2013, Act 250, Imd. Eff. Dec. 26, 2013.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11523a Operation of type II landfill.

Sec. 11523a. (1) Effective April 9, 1997, the department shall not issue a license to operate a type II landfill unless the applicant demonstrates that for any new unit or existing unit at the facility, the combination of the perpetual care fund established under section 11525, bonds, and the financial capability of the applicant as evidenced by a financial test, provides financial assurance in an amount not less than that required by this section. An applicant may utilize a financial test for an amount up to, but not exceeding 70% of the closure, postclosure, and corrective action cost estimate.

(2) An applicant may demonstrate compliance with this section by submitting evidence, with a form consistent with this part and provided by the department, that the applicant has financial assurance for any existing unit or new unit in an amount equal to or greater than the sum of the following standardized costs:

(a) A standard closure cost estimate. The standard closure cost estimate shall be based upon the sum of the following costs in 1996 dollars, adjusted for inflation and partial closures, if any, as specified in subsections (4) and (5):

(*i*) A base cost of $20,000.00 per acre to construct a compacted soil final cover using on-site material.

(*ii*) A supplemental cost of $20,000.00 per acre, to install a synthetic cover liner, if required by rules under this part.

(*iii*) A supplemental cost of $5,000.00 per acre, if low permeability soil must be transported from off-site to construct the final cover or if a bentonite geocomposite liner is used instead of low permeability soil in a

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composite cover.

(*iv*) A supplemental cost of $5,000.00 per acre, to construct a passive gas collection system in the final cover, unless an active gas collection system has been installed at the facility.

(b) A standard postclosure cost estimate. The standard postclosure cost estimate shall be based upon the sum of the following costs, adjusted for inflation as specified in section 11525(2):

(*i*) A final cover maintenance cost of $200.00 per acre per year.

(*ii*) A leachate disposal cost of $100.00 per acre per year.

(*iii*) A leachate transportation cost of $1,000.00 per acre per year, if leachate is required to be transported off-site for treatment.

(*iv*) A groundwater monitoring cost of $1,000.00 per monitoring well per year.

(*v*) A gas monitoring cost of $100.00 per monitoring point per year, for monitoring points used to detect landfill gas at or beyond the facility property boundary.

(c) The corrective action cost estimate, if any. The corrective action cost estimate shall be a detailed written estimate, in current dollars, of the cost of hiring a third party to perform corrective action in accordance with this part.

(3) Instead of using some or all of the standardized costs specified in subsection (2), an applicant may estimate the site specific costs of closure or postclosure maintenance and monitoring. A site specific cost estimate shall be a written estimate, in current dollars, of the cost of hiring a third party to perform the activity. For the purposes of this subsection, a parent corporation or a subsidiary of the owner or operator is not a third party. Site specific cost estimates shall be based on the following:

(a) For closure, the cost to close the largest area of the landfill ever requiring a final cover at any time during the active life, when the extent and manner of its operation would make closure the most expensive, in accordance with the approved closure plan. The closure cost estimate may not incorporate any salvage value that may be realized by the sale of structures, land, equipment, or other assets associated with the facility at the time of final closure.

(b) For postclosure, the cost to conduct postclosure maintenance and monitoring in accordance with the approved postclosure plan for the entire postclosure period.

(4) The owner or operator of a landfill subject to this section shall, during the active life of the landfill and during the postclosure care period, annually adjust the financial assurance cost estimates and corresponding amount of financial assurance for inflation. Cost estimates shall be adjusted for inflation by multiplying the cost estimate by an inflation factor derived from the most recent United States department of the interior, bureau of reclamation composite index published by the United States department of commerce or another index that is more representative of the costs of closure and postclosure monitoring and maintenance as determined appropriate by the department. The owner or operator shall document the adjustment on a form consistent with this part as prepared by the department and shall place the documentation in the operating record of the facility.

(5) The owner or operator of a landfill subject to this section may request that the department authorize a reduction in the approved cost estimates and corresponding financial assurance for the landfill by submitting a form consistent with this part and provided by the department certifying completion of any of the following activities:

(a) Partial closure of the landfill. The current closure cost estimate for partially closed portions of a landfill unit may be reduced by 80%, if the maximum waste slope on the unclosed portions of the unit does not exceed 25%. The percentage of the cost estimate reduction approved by the department for the partially closed portion shall be reduced 1% for every 1% increase in the slope of waste over 25% in the active portion. An owner or operator requesting a reduction in financial assurance for partial closure shall enclose with the request a certification under the seal of a licensed professional engineer that certifies both of the following:

(*i*) That a portion of the licensed landfill unit has reached final grades and has had a final cover installed in compliance with the approved closure plan and rules promulgated under this part.

(*ii*) The maximum slope of waste in the active portion of the landfill unit at the time of partial closure.

(b) Final closure of the landfill. An owner or operator requesting a cost estimate reduction for final closure shall submit a certification under the seal of a licensed professional engineer that closure of that landfill unit has been fully completed in accordance with the approved closure plan for the landfill. Within 60 days of receiving a certification under this subsection, the department shall perform a consistency review of the submitted certification and do 1 of the following:

(*i*) Approve the certification and notify the owner or operator that he or she may reduce the closure cost estimate to zero.

(*ii*) Disapprove the certification and provide the owner or operator with a detailed written statement of the reasons why the department has determined that closure certification has not been conducted in accordance

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with this part, the rules promulgated under this part, or an approved closure plan.

(c) Postclosure maintenance and monitoring. The owner or operator of a landfill unit who has completed final closure of the unit may request a reduction in the postclosure cost estimate and corresponding financial assurance for 1 year or more of postclosure maintenance and monitoring if the landfill has been monitored and maintained in accordance with the approved postclosure plan. The department shall, within 60 days of receiving a cost estimate reduction request grant written approval or issue a written denial stating the reason for denial. The department shall grant the request and the owner or operator may reduce the postclosure cost estimate to reflect the number of years remaining in the postclosure period unless the department denies the request and the written denial states that the owner or operator has not performed the specific tasks consistent with this part, rules promulgated under this part, and an approved plan.

(6) The owner or operator of a landfill subject to this section may request a reduction in the amount of one or more of the financial assurance mechanisms in place. If the combined value of the remaining financial assurance mechanisms equals the amount required under this section, the department shall approve the request.

(7) An owner or operator requesting that the department approve a financial assurance reduction under subsection (5) or (6) shall do so on a form consistent with this part and provided by the department. The department shall grant written approval or, within 60 days of receiving a financial assurance reduction request, issue a written denial stating the reason for the denial.

History: Add. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 2013, Act 250, Imd. Eff. Dec. 26, 2013.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11523b Trust fund or escrow account.

Sec. 11523b. (1) The owner or operator of a landfill may establish a trust fund or escrow account to fulfill the requirements of sections 11523 and 11523a. The trust fund or escrow account shall be executed on a form provided by the department.

(2) Payments into a trust fund or escrow account shall be made annually over the term of the first operating license issued after the effective date of this section. The first payment into a trust fund or escrow account shall be made prior to licensure and shall be at least equal to the portion of the financial assurance requirement to be covered by the trust fund or escrow account divided by the term of the operating license. Subsequent payments shall be equal to the remaining financial assurance requirement divided by the number of years remaining until the license expires.

(3) If the owner or operator of a landfill establishes a trust fund or escrow account after having used one or more alternate forms of financial assurance, the initial payment into the trust fund or escrow account shall be at least the amount the fund would contain if the fund were established initially and annual payments made according to subsection (2).

(4) All earnings and interest from a trust fund or escrow account shall be credited to the fund or account. However, the custodian may be compensated for reasonable fees and costs for his or her responsibilities as custodian. The custodian shall ensure the filing of all required tax returns for which the trust fund or escrow account is liable and shall disburse funds from earnings to pay lawfully due taxes owed by the trust fund or escrow account, without permission of the department.

(5) The custodian shall annually, 30 days preceding the anniversary date of establishment of the fund, furnish to the owner or operator and to the department a statement confirming the value of the fund or account as of the end of that month.

(6) The owner or operator may request that the department authorize the release of funds from a trust fund or escrow account. The department shall grant the request if the owner or operator demonstrates that the value of the fund or account exceeds the owner's or operator's financial assurance obligation. A payment or disbursement from the fund or account shall not be made without the prior written approval of the department.

(7) The owner or operator shall receive all interest or earnings from a trust fund or escrow account upon its termination.

(8) For purposes of this section, the term “custodian” means the trustee of a trust fund or escrow agent of an escrow account.

History: Add. 1996, Act 359, Imd. Eff. July 1, 1996.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

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324.11524 Repealed. 2013, Act 250, Imd. Eff. Dec. 26, 2013.

Compiler's note: The repealed section pertained to request for reduction in amount of financial assurance.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11525 Perpetual care fund.

Sec. 11525. (1) The owner or operator of a landfill shall establish and maintain a perpetual care fund for a period of 30 years after final closure of the landfill as specified in this section. A perpetual care fund may be established as a trust, an escrow account, or a perpetual care fund bond and may be used to demonstrate financial assurance for type II landfills under section 11523 and section 11523a.

(2) Except as otherwise provided in this section, the owner or operator of a landfill shall increase the amount of his or her perpetual care fund 75 cents for each ton or portion of a ton or 25 cents for each cubic yard or portion of a cubic yard of solid waste that is disposed of in the landfill after June 17, 1990 until the fund reaches the maximum required fund amount. As of July 1, 1996, the maximum required fund amount is $1,156,000.00. This amount shall be annually adjusted for inflation and rounded to the nearest thousand. The department shall adjust the maximum required fund amount for inflation annually by multiplying the amount by an inflation factor derived from the most recent bureau of reclamation composite index published by the United States department of commerce or another index more representative of the costs of closure and postclosure monitoring and maintenance as determined appropriate by the department. Increases to the amount of a perpetual care fund required under this subsection shall be calculated based on solid waste disposed of in the landfill as of the end of the state fiscal year and shall be made within 30 days after the end of each state fiscal year.

(3) The owner or operator of a landfill that is used for the disposal of the following materials shall increase the amount of the perpetual care fund 7.5 cents for each ton or cubic yard or portion of a ton or cubic yard of the following materials that are disposed of in the landfill after June 17, 1990:

(a) Coal ash, wood ash, or cement kiln dust that is disposed of in a landfill that is used only for the disposal of coal ash, wood ash, or cement kiln dust, or a combination of these materials, or that is permanently segregated in a landfill.

(b) Wastewater treatment sludge or sediments from wood pulp or paper producing industries that is disposed of in a landfill that is used only for the disposal of wastewater treatment sludge and sediments from wood pulp or paper producing industries, or that is permanently segregated in a landfill.

(c) Foundry sand or other material that is approved by the department for use as daily cover at an operating landfill, that is disposed of in a landfill that is used only for the disposal of foundry sand, or that is permanently segregated in a landfill.

(4) The owner or operator of a landfill that is used only for the disposal of a mixture of 2 or more of the materials described in subsection (3)(a) to (c) or in which a mixture of 2 or more of these materials are permanently segregated shall increase the amount of the perpetual care fund 7.5 cents for each ton or cubic yard or portion of a ton or cubic yard of these materials that are disposed of in the landfill after July 1, 1996.

(5) The amount of a perpetual care fund is not required to be increased for materials that are regulated under part 631.

(6) The owner or operator of a landfill may increase the amount of the perpetual care fund above the amount otherwise required by this section at his or her discretion.

(7) The custodian of a perpetual care fund trust or escrow account shall be a bank or other financial institution that has the authority to act as a custodian and whose account operations are regulated and examined by a federal or state agency. Until the perpetual care fund trust or escrow account reaches the maximum required fund amount, the custodian of a perpetual care fund trust or escrow account shall credit any interest and earnings of the perpetual care fund trust or escrow account to the perpetual care fund trust or escrow account. After the perpetual care fund trust or escrow account reaches the maximum required fund amount, any interest and earnings shall be distributed as directed by the owner or operator. The agreement governing the operation of the perpetual care fund trust or escrow account shall be executed on a form consistent with this part and provided by the department. The custodian may be compensated from the fund for reasonable fees and costs incurred for his or her responsibilities as custodian. The custodian of a perpetual care fund trust or escrow account shall make an accounting to the department within 30 days following the close of each state fiscal year.

(8) The custodian of a perpetual care fund shall not disburse any funds to the owner or operator of a landfill for the purposes of the perpetual care fund except upon the prior written approval of the department.

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However, the custodian shall ensure the filing of all required tax returns for which the perpetual care fund is liable and shall disburse funds to pay lawfully due taxes owed by the perpetual care fund without permission of the department. The owner or operator of the landfill shall provide notice of requests for disbursement and denials and approvals to the custodian of the perpetual care fund. Requests for disbursement from a perpetual care fund shall be submitted not more frequently than semiannually. The owner or operator of a landfill may request disbursement of funds from a perpetual care fund whenever the amount of money in the fund exceeds the maximum required fund amount. The department shall approve the disbursement if the total amount of financial assurance maintained meets the requirements of sections 11523 and 11523a. As used in this subsection, "maximum required fund amount" means:

(a) For those landfills containing only those materials specified in subsection (3), an amount equal to 1/2 of the maximum required fund amount specified in subsection (2).

(b) For all other landfills, an amount equal to the maximum required fund amount specified in subsection (2).

(9) If the owner or operator of a landfill refuses or fails to conduct closure, postclosure monitoring and maintenance, or corrective action as necessary to protect the public health, safety, or welfare, or the environment or fails to request the disbursement of money from a perpetual care fund when necessary to protect the public health, safety, or welfare, or the environment, or fails to pay the solid waste management program administration fee or the surcharge required under section 11525a, then the department may draw on the perpetual care fund and may expend the money for closure, postclosure monitoring and maintenance, and corrective action, as necessary. The department may draw on a perpetual care fund for administrative costs associated with actions taken under this subsection.

(10) Upon approval by the department of a request to terminate financial assurance for a landfill under section 11525b, any money in the perpetual care fund for that landfill shall be disbursed by the custodian to the owner of the landfill unless a contract between the owner and the operator of the landfill provides otherwise.

(11) The owner of a landfill shall provide notice to the custodian of the perpetual care fund for that landfill if there is a change of ownership of the landfill. The custodian shall maintain records of ownership of a landfill during the period of existence of the perpetual care fund.

(12) This section does not relieve an owner or operator of a landfill of any liability that he or she may have under this part or as otherwise provided by law.

(13) This section does not create a cause of action at law or in equity against a custodian of a perpetual care fund other than for errors or omissions related to investments, accountings, disbursements, filings of required tax returns, and maintenance of records required by this section or the applicable perpetual care fund.

(14) As used in this section, "custodian" means the trustee or escrow agent of any of the following:

(a) A perpetual care fund that is established as a trust or escrow account.

(b) A standby trust or escrow account for a perpetual care fund bond.

(15) A perpetual care fund that is established as a trust or escrow account may be replaced with a perpetual care fund that is established as a perpetual care fund bond that complies with this section. Upon such replacement, the director shall authorize the custodian of the trust or escrow account to disburse the money in the trust or escrow account to the owner of the landfill unless a contract between the owner and operator of the landfill specifies otherwise.

(16) An owner or operator of a landfill who uses a perpetual care fund bond to satisfy the requirements of this section shall also establish a standby trust or escrow account. All payments made under the terms of the perpetual care fund bond shall be deposited by the custodian directly into the standby trust or escrow account in accordance with instructions from the director. The standby trust or escrow account must meet the requirements for a trust or escrow account established as a perpetual care fund under subsection (1), except that until the standby trust or escrow account is funded pursuant to the requirements of this subsection, the following are not required:

(a) Payments into the standby trust or escrow account as specified in subsection (2).

(b) Annual accounting valuations as required in subsection (7).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 1996, Act 506, Imd. Eff. Jan. 9, 1997;—Am. 2003, Act 153, Eff. Oct. 1, 2003;—Am. 2013, Act 250, Imd. Eff. Dec. 26, 2013.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11525a Owner or operator of landfill; surcharge; payment of surcharge; deposit;

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"captive facility" defined.

Sec. 11525a. (1) The owner or operator of a landfill shall pay a surcharge as follows:

(a) Except as provided in subdivision (b), 12 cents for each cubic yard or portion of a cubic yard of solid waste or municipal solid waste incinerator ash that is disposed of in the landfill before October 1, 2019.

(b) For type III landfills that are captive facilities, the following annual amounts:

(*i*) For a captive facility that receives 100,000 or more cubic yards of waste, $3,000.00.

(*ii*) For a captive facility that receives 75,000 or more but less than 100,000 cubic yards of waste, $2,500.00.

(*iii*) For a captive facility that receives 50,000 or more but less than 75,000 cubic yards of waste, $2,000.00.

(*iv*) For a captive facility that receives 25,000 or more but less than 50,000 cubic yards of waste, $1,000.00.

(*v*) For a captive facility that receives less than 25,000 cubic yards of waste, $500.00.

(2) The owner or operator of a landfill shall pay the surcharge under subsection (1)(a) within 30 days after the end of each quarter of the state fiscal year. The owner or operator of a type III landfill that is a captive facility shall pay the surcharge under subsection (1)(b) by January 31 of each year.

(3) The owner or operator of a landfill who is required to pay the surcharge under subsection (1) shall pass through and collect the surcharge from any person who generated the solid waste or who arranged for its delivery to the solid waste hauler or transfer facility notwithstanding the provisions of any contract or agreement to the contrary or the absence of any contract or agreement.

(4) Surcharges collected under this section shall be forwarded to the state treasurer for deposit in the solid waste staff account of the solid waste management fund established in section 11550.

(5) As used in this section, "captive facility" means a landfill that accepts for disposal only nonhazardous industrial waste generated only by the owner of the landfill or a nonhazardous industrial waste landfill that is described in section 11525(3).

History: Add. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2003, Act 153, Eff. Oct. 1, 2003;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007;—Am. 2011, Act 149, Imd. Eff. Sept. 21, 2011;—Am. 2013, Act 72, Imd. Eff. June 25, 2013;—Am. 2015, Act 82, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11525b Continuous financial assurance coverage required; request for termination of financial assurance requirements.

Sec. 11525b. (1) The owner or operator of a disposal area shall provide continuous financial assurance coverage until released from these requirements by the department under the provisions of this part.

(2) The owner or operator of a landfill who has completed postclosure maintenance and monitoring of the landfill in accordance with this part, rules promulgated under this part, and approved postclosure plan may request that financial assurance required by sections 11523 and 11523a be terminated. A person requesting termination of bonding and financial assurance shall submit to the department a statement that the landfill has been monitored and maintained in accordance with this part, rules promulgated under this part, and the approved postclosure plan for the postclosure period specified in section 11523 and shall certify that the landfill is not subject to corrective action under section 11515. Within 60 days of receiving a statement under this subsection, the department shall perform a consistency review of the submitted statement and do 1 of the following:

(a) Approve the statement, notify the owner or operator that he or she is no longer required to maintain financial assurance, return or release all financial assurance mechanisms, and, if the perpetual care fund is established as a trust or escrow account, notify the custodian of the perpetual care fund that money from the fund shall be disbursed as provided in section 11525(10).

(b) Disapprove the statement and provide the owner or operator with a detailed written statement of the reasons why the department has determined that postclosure maintenance and monitoring and corrective action, if any, have not been conducted in accordance with this part, the rules promulgated under this part, or an approved postclosure plan.

History: Add. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2013, Act 250, Imd. Eff. Dec. 26, 2013.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

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324.11526 Inspection of solid waste transporting unit; determination; administration; inspections.

Sec. 11526. (1) The department, a health officer, or a law enforcement officer of competent jurisdiction may inspect a solid waste transporting unit that is being used to transport solid waste along a public road to determine if the solid waste transporting unit is designed, maintained, and operated in a manner to prevent littering or to determine if the owner or operator of the solid waste transporting unit is performing in compliance with this part and the rules promulgated under this part.

(2) In order to protect the public health, safety, and welfare and the environment of this state from items and substances being illegally disposed of in landfills in this state, the department, in conjunction with the department of state police, shall administer this part so as to do all of the following:

(a) Ensure that all disposal areas are in full compliance with this part and the rules promulgated under this part.

(b) Provide for the inspection of each solid waste disposal area for compliance with this part and the rules promulgated under this part at least 4 times per year.

(c) Ensure that all persons disposing of solid waste are doing so in compliance with this part and the rules promulgated under this part.

(3) The department and the department of state police may conduct regular, random inspections of waste being transported for disposal at disposal areas in this state. Inspections under this subsection may be conducted at disposal areas at the end original destination.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 43, Imd. Eff. Mar. 29, 2004.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11526a Solid waste generated out of state; acceptance by owner or operator of landfill prohibited; exceptions; disposal capacity.

Sec. 11526a. (1) Beginning October 1, 2004, in order to protect the public health, safety, and welfare and the environment of this state from the improper disposal of waste that is prohibited from disposal in a landfill, and in recognition that the nature of solid waste collection and transport limits the ability of the state to conduct cost effective inspections to ensure compliance with state law, the owner or operator of a landfill shall not accept for disposal in this state solid waste, including, but not limited to, municipal solid waste incinerator ash, that was generated outside of this state unless 1 or more of the following are met:

(a) The solid waste is composed of a uniform type of item, material, or substance, other than municipal solid waste incinerator ash, that meets the requirements for disposal in a landfill under this part and the rules promulgated under this part.

(b) The solid waste was received through a material recovery facility, a transfer station, or other facility that has documented that it has removed from the solid waste being delivered to the landfill those items that are prohibited from disposal in a landfill.

(c) The country, state, province, or local jurisdiction in which the solid waste was generated is approved by the department for inclusion on the list compiled by the department under section 11526b.

(2) Notwithstanding section 11538 or any other provision of this part, if there is sufficient disposal capacity for a county's disposal needs in or within 150 miles of the county, all of the following apply:

(a) The county is not required to identify a site for a new landfill in its solid waste management plan.

(b) An interim siting mechanism shall not become operative in the county unless the county board of commissioners determines otherwise.

(c) The department is not required to issue a construction permit for a new landfill in the county.

History: Add. 2004, Act 40, Imd. Eff. Mar. 29, 2004.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11526b Compliance with MCL 324.11526b required; notice requirements; compilation of list; documentation.

Sec. 11526b. (1) Not later than October 1, 2004, the department shall do all of the following:

(a) Notify each state, the country of Canada, and each province in Canada that landfills in this state will not accept for disposal solid waste that does not comply with section 11526a.

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(b) Compile a list of countries, states, provinces, and local jurisdictions that prohibit from disposal in a landfill the items prohibited from disposal in a landfill located in this state or that prevent from disposal in a landfill the items prohibited from disposal in a landfill located in this state through enforceable solid waste disposal requirements that are comparable to this part.

(c) Prepare and provide to each landfill in the state a copy of a list of the countries, states, provinces, and local jurisdictions compiled under subdivision (b).

(2) The department shall include a country, state, province, or local jurisdiction on the list described in subsection (1) if the country, state, province, or local jurisdiction, or another person, provides the department with documentation that the country, state, province, or local jurisdiction prohibits from disposal in a landfill the items prohibited from disposal in a landfill located in this state or that it prevents from disposal in a landfill the items prohibited from disposal in a landfill located in this state through enforceable solid waste disposal requirements that are comparable to this part. Such documentation shall include all pertinent statutes, administrative regulations, and ordinances.

History: Add. 2004, Act 37, Imd. Eff. Mar. 29, 2004.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11526c Order restricting or prohibiting solid waste transportation or disposal in this state.

Sec. 11526c. (1) The director may issue an order restricting or prohibiting the transportation or disposal in this state of solid waste originating within or outside of this state if both of the following apply:

(a) The director, after consultation with appropriate officials, has determined that the transportation or disposal of the solid waste poses a substantial threat to the public health or safety or to the environment.

(b) The director determines that the restriction or prohibition on the transportation or disposal of the solid waste is necessary to minimize or eliminate the substantial threat to public health or safety or to the environment.

(2) At least 30 days before the director issues an order under subsection (1), the department shall post the proposed order and its effective date on its website with information on how a member of the public can comment on the proposed order and shall provide a copy of the proposed order to the members of the standing committees of the senate and house of representatives that consider legislation pertaining to public health or the environment. Before issuing the order, the director shall consider comments received on the proposed order. The department shall post the final order on its website beginning not later than the final order's effective date. This subsection does not apply in an emergency situation described in subsection (3).

(3) In an emergency situation posing an imminent and substantial threat to public health or safety or to the environment, the director, before issuing an order under subsection (1), shall provide a copy of the proposed order to the members of the standing committees of the senate and house of representatives that consider legislation pertaining to public health or the environment and publicize the proposed order in any manner appropriate to help ensure that interested parties are provided notice of the proposed order and its effective date. The department shall post the final order on its website as soon as practicable.

(4) An order issued pursuant to this section shall expire 60 days after it takes effect, unless the order provides for an earlier expiration date.

(5) Subsections (2) and (3) do not apply to the reissuance of an order if the reissued order takes effect upon the expiration of the identical order it replaces. However, the department shall post the reissued order on its website beginning not later than the reissued order's effective date.

(6) A person may seek judicial review of an order issued under this section as provided in section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

(7) The director shall rescind an order issued under this section when the director determines that the threat upon which the order was based no longer exists.

History: Add. 2004, Act 36, Imd. Eff. Mar. 29, 2004.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11526e Disposal of municipal solid waste generated outside of United States; applicability of subsections (1) and (2).

Sec. 11526e. (1) Subject to subsection (3), a person shall not deliver for disposal, in a landfill or incinerator

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in this state, municipal solid waste, including, but not limited to, municipal solid waste incinerator ash, that was generated outside of the United States.

(2) Subject to subsection (3), the owner or operator of a landfill or incinerator in this state shall not accept for disposal municipal solid waste, including, but not limited to, municipal solid waste incinerator ash, that was generated outside of the United States.

(3) Subsections (1) and (2) apply notwithstanding any other provision of this part. However, subsections (1) and (2) do not apply unless congress enacts legislation under clause 3 of section 8 of article I of the constitution of the United States authorizing such prohibitions. Subsections (1) and (2) do not apply until 90 days after the effective date of such federal legislation or 90 days after the effective date of the amendatory act that added this section, whichever is later.

History: Add. 2006, Act 57, Imd. Eff. Mar. 13, 2006.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11527 Delivery of waste to licensed disposal area or solid waste transfer facility; vehicle or container; violation; penalty.

Sec. 11527. (1) A solid waste hauler transporting solid waste over a public road in this state shall deliver all waste to a disposal area or solid waste transfer facility licensed under this part and shall use only a vehicle or container that does not contribute to littering and that conforms to the rules promulgated by the department.

(2) A solid waste hauler who violates this part or a rule promulgated under this part, or who is responsible for a vehicle that has in part contributed to a violation of this part or a rule promulgated under this part, is subject to a penalty as provided in section 11549.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11527a Website listing materials prohibited from disposal; notice to customers.

Sec. 11527a. (1) The department shall post on its website a list of materials prohibited from disposal in a landfill under section 11514 and appropriate disposal options for those materials.

(2) A solid waste hauler that disposes of solid waste in a landfill shall annually notify each of its customers of each of the following:

(a) The materials that are prohibited from disposal in a landfill under section 11514.

(b) The appropriate disposal options for those materials as described on the department's website.

(c) The department's website address where the disposal options are described.

History: Add. 2004, Act 42, Imd. Eff. Mar. 29, 2004.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11528 Solid waste transporting unit; watertight; construction, maintenance, and operation; violation; penalties; ordering unit out of service.

Sec. 11528. (1) A solid waste transporting unit used for garbage, industrial or domestic sludges, or other moisture laden materials not specifically covered by part 121 shall be watertight and constructed, maintained, and operated to prevent littering. Solid waste transporting units used for hauling other solid waste shall be designed and operated to prevent littering or any other nuisance.

(2) A solid waste hauler who violates this part or the rules promulgated under this part is subject to the penalties provided in this part.

(3) The department, a health officer, or a law enforcement officer may order a solid waste transporting unit out of service if the unit does not satisfy the requirements of this part or the rules promulgated under this part. Continued use of a solid waste transporting unit ordered out of service is a violation of this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

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324.11529 Exemptions.

Sec. 11529. (1) A disposal area that is a solid waste transfer facility is not subject to the construction permit and operating license requirements of this part if either of the following circumstances exists:

(a) The solid waste transfer facility is not designed to accept wastes from vehicles with mechanical compaction devices.

(b) The solid waste transfer facility accepts less than 200 uncompacted cubic yards per day.

(2) A solid waste transfer facility that is exempt from the construction permit and operating license requirements of this part under subsection (1) shall comply with the operating requirements of this part and the rules promulgated under this part.

(3) Except as provided in subsection (5), a disposal area that is an incinerator may, but is not required to, comply with the construction permit and operating license requirements of this part if both of the following conditions are met:

(a) The operation of the incinerator does not result in the exposure of any solid waste to the atmosphere and the elements.

(b) The incinerator has a permit issued under part 55.

(4) A disposal area that is an incinerator that does not comply with the construction permit and operating license requirements of this part as permitted in subsection (3) is subject to the planning provisions of this part and must be included in the county solid waste management plan for the county in which the incinerator is located.

(5) A disposal area that is a municipal solid waste incinerator that is designed to burn at a temperature in excess of 2500 degrees Fahrenheit is not subject to the construction permit requirements of this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11530 Collection center for junk motor vehicles and farm implements; competitive bidding; bonds; "collect" defined.

Sec. 11530. (1) A municipality or county may establish and operate a collection center for junk motor vehicles and farm implements.

(2) A municipality or county may collect junk motor vehicles and farm implements and dispose of them through its collection center through the process of competitive bidding.

(3) A municipality or county may issue bonds as necessary pursuant to Act No. 342 of the Public Acts of 1969, being sections 141.151 to 141.153 of the Michigan Compiled Laws, to finance the cost of constructing or operating facilities to collect junk motor vehicles or farm implements. The bonds shall be general obligation bonds and shall be backed by the full faith and credit of the municipality or county.

(4) As used in this section, "collect" means to obtain a vehicle pursuant to section 252 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.252 of the Michigan Compiled Laws, or to obtain a vehicle or farm implement and its title pursuant to a transfer from the owner.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11531 Solid waste removal; frequency; disposal; ordinance.

Sec. 11531. (1) A municipality or county shall assure that all solid waste is removed from the site of generation frequently enough to protect the public health, and is delivered to licensed disposal areas, except waste that is permitted by state law or rules promulgated by the department to be disposed of at the site of generation.

(2) An ordinance enacted before February 8, 1988 by a county or municipality incidental to the financing of a publicly owned disposal area or areas under construction that directs that all or part of the solid waste generated in that county or municipality be directed to the disposal area or areas is an acceptable means of compliance with subsection (1), notwithstanding that the ordinance, in the case of a county, has not been approved by the governor. This subsection applies only to ordinances adopted by the governing body of a county or municipality before February 8, 1988, and does not validate or invalidate an ordinance adopted after February 8, 1988 as an acceptable means of compliance with subsection (1).

History: 1994, Act 451, Eff. Mar. 30, 1995.

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Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11532 Impact fees; agreement; collection, payment, and disposition; reduction; use of revenue; trust fund; board of trustees; membership and terms; expenditures from trust fund.

Sec. 11532. (1) Except as provided in subsection (3), a municipality may impose an impact fee of not more than 10 cents per cubic yard on solid waste that is disposed of in a landfill located within the municipality that is utilized by the public and utilized to dispose of solid waste collected from 2 or more persons. However, if the landfill is located within a village, the impact fee provided for in this subsection shall be imposed by the township in agreement with the village. The impact fee shall be assessed uniformly on all wastes accepted for disposal.

(2) Except as provided in subsection (3), a municipality may impose an impact fee of not more than 10 cents per cubic yard on municipal solid waste incinerator ash that is disposed of in a landfill located within the municipality that is utilized to dispose of municipal solid waste incinerator ash. However, if the landfill is located within a village, the impact fee provided for in this subsection shall be imposed by the township in agreement with the village.

(3) A municipality may enter into an agreement with the owner or operator of a landfill to establish a higher impact fee than those provided for in subsections (1) and (2).

(4) The impact fees imposed under this section shall be collected by the owner or operator of a landfill and shall be paid to the municipality quarterly by the thirtieth day after the end of each calendar quarter. However, the impact fees allowed to be assessed to each landfill under this section shall be reduced by any amount of revenue paid to or available to the municipality from the landfill under the terms of any preexisting agreements, including, but not limited to, contracts, special use permit conditions, court settlement agreement conditions, and trusts.

(5) Unless a trust fund is established by a municipality pursuant to subsection (6), the revenue collected by a municipality under subsections (1) and (2) shall be deposited in its general fund to be used for any purpose that promotes the public health, safety, or welfare of the citizens of the municipality. However, revenue collected pursuant to this section shall not be used to bring or support a lawsuit or other legal action against an owner or operator of a landfill who is collecting an impact fee pursuant to subsection (4) unless the owner or operator of the landfill has instituted a lawsuit or other legal action against the municipality.

(6) The municipality may establish a trust fund to receive revenue collected pursuant to this section. The trust fund shall be administered by a board of trustees. The board of trustees shall consist of the following members:

(a) The chief elected official of the municipality creating the trust fund.

(b) An individual from the municipality appointed by the governing board of the municipality.

(c) An individual approved by the owners or operators of the landfills within the municipality and appointed by the governing board of the municipality.

(7) Individuals appointed to serve on the board of trustees under subsection (6)(b) and (c) shall serve for terms of 2 years.

(8) Money in the trust fund may be expended, pursuant to a majority vote of the board of trustees, for any purpose that promotes the public health, safety, or welfare of the citizens of the municipality. However, revenue collected pursuant to this section shall not be used to bring or support a lawsuit or other legal action against an owner or operator of a landfill who is collecting an impact fee pursuant to subsection (4) unless the owner or operator of the landfill has instituted a lawsuit or other legal action against the municipality.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11533 Initial solid waste management plan; contents; submission; review and update; amendment; scope of plan; minimum compliance; consultation with regional planning agency; filing, form, and contents of notice of intent; effect of failure to file notice of intent; vote; preparation of plan by regional solid waste management planning agency or by department; progress report.

Sec. 11533. (1) Each solid waste management plan shall include an enforceable program and process to

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assure that the nonhazardous solid waste generated or to be generated in the planning area for a period of 10 years or more is collected and recovered, processed, or disposed of at disposal areas that comply with state law and rules promulgated by the department governing location, design, and operation of the disposal areas. Each solid waste management plan may include an enforceable program and process to assure that only items authorized for disposal in a disposal area under this part and the rules promulgated under this part are disposed of in the disposal area.

(2) An initial solid waste management plan shall be prepared and approved under this section and shall be submitted to the director not later than January 5, 1984. Following submittal of the initial plan, the solid waste management plan shall be reviewed and updated every 5 years. An updated solid waste management plan and an amendment to a solid waste management plan shall be prepared and approved as provided in this section and sections 11534, 11535, 11536, 11537, and 11537a. The solid waste management plan shall encompass all municipalities within the county. The solid waste management plan shall at a minimum comply with the requirements of sections 11537a and 11538. The solid waste management plan shall take into consideration solid waste management plans in contiguous counties and existing local approved solid waste management plans as they relate to the county's needs. At a minimum, a county preparing a solid waste management plan shall consult with the regional planning agency from the beginning to the completion of the plan.

(3) Not later than July 1, 1981, each county shall file with the department and with each municipality within the county on a form provided by the department, a notice of intent, indicating the county's intent to prepare a solid waste management plan or to upgrade an existing solid waste management plan. The notice shall identify the designated agency which shall be responsible for preparing the solid waste management plan.

(4) If the county fails to file a notice of intent with the department within the prescribed time, the department immediately shall notify each municipality within the county and shall request those municipalities to prepare a solid waste management plan for the county and shall convene a meeting to discuss the plan preparation. Within 4 months following notification by the department, the municipalities shall decide by a majority vote of the municipalities in the county whether or not to file a notice of intent to prepare the solid waste management plan. Each municipality in the county shall have 1 vote. If a majority does not agree, then a notice of intent shall not be filed. The notice shall identify the designated agency which is responsible for preparing the solid waste management plan.

(5) If the municipalities fail to file a notice of intent to prepare a solid waste management plan with the department within the prescribed time, the department shall request the appropriate regional solid waste management planning agency to prepare the solid waste management plan. The regional solid waste management planning agency shall respond within 90 days after the date of the request.

(6) If the regional solid waste management planning agency declines to prepare a solid waste management plan, the department shall prepare a solid waste management plan for the county and that plan shall be final.

(7) A solid waste management planning agency, upon request of the department, shall submit a progress report in preparing its solid waste management plan.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 44, Imd. Eff. Mar. 29, 2004.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11534 Planning committee; purpose; appointment, qualifications, and terms of members; approval of appointment; reappointment; vacancy; removal; chairperson; procedures.

Sec. 11534. (1) The county executive of a charter county that elects a county executive and that chooses to prepare a solid waste management plan under section 11533 or the county board of commissioners in all other counties choosing to prepare an initial solid waste management plan under section 11533, or the municipalities preparing an initial solid waste management plan under section 11533(4), shall appoint a planning committee to assist the agency designated to prepare the plan under section 11533. If the county charter provides procedures for approval by the county board of commissioners of appointments by the county executive, an appointment under this subsection shall be subject to that approval. A planning committee appointed pursuant to this subsection shall be appointed for terms of 2 years. A planning committee appointed pursuant to this subsection may be reappointed for the purpose of completing the preparation of the initial solid waste management plan or overseeing the implementation of the initial plan. Reappointed members of a planning committee shall serve for terms not to exceed 2 years as determined by the appointing authority. An initial solid waste management plan shall only be approved by a majority of the

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members appointed and serving.

(2) A planning committee appointed pursuant to this section shall consist of 14 members. Of the members appointed, 4 shall represent the solid waste management industry, 2 shall represent environmental interest groups, 1 shall represent county government, 1 shall represent city government, 1 shall represent township government, 1 shall represent the regional solid waste planning agency, 1 shall represent industrial waste generators, and 3 shall represent the general public. A member appointed to represent a county, city, or township government shall be an elected official of that government or the designee of that elected official. Vacancies shall be filled in the same manner as the original appointments. A member may be removed for nonperformance of duty.

(3) A planning committee appointed pursuant to this section shall annually elect a chairperson and shall establish procedures for conducting the committee's activities and for reviewing the matters to be considered by the committee.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11535 County or regional solid waste management planning agency; duties.

Sec. 11535. A county or regional solid waste management planning agency preparing a solid waste management plan shall do all of the following:

(a) Solicit the advice of and consult periodically during the preparation of the plan with the municipalities, appropriate organizations, and the private sector in the county under section 11538(1) and solicit the advice of and consult with the appropriate county or regional solid waste management planning agency and adjacent counties and municipalities in adjacent counties which may be significantly affected by the solid waste management plan for a county.

(b) If a planning committee has been appointed under section 11534, prepare the plan with the advice, consultation, and assistance of the planning committee.

(c) Notify by letter the chief elected official of each municipality within the county and any other person within the county so requesting, not less than 10 days before each public meeting of the planning agency designated by the county, if that planning agency plans to discuss the county plan. The letter shall indicate as precisely as possible the subject matter being discussed.

(d) Submit for review a copy of the proposed county or regional solid waste management plan to the department, to each municipality within the affected county, and to adjacent counties and municipalities that may be affected by the plan or that have requested the opportunity to review the plan. The county plan shall be submitted for review to the designated regional solid waste management planning agency for that county. Reviewing agencies shall be allowed an opportunity of not less than 3 months to review and comment on the plan before adoption of the plan by the county or a designated regional solid waste management planning agency. The comments of a reviewing agency shall be submitted with the plan to the county board of commissioners or to the regional solid waste management planning agency.

(e) Publish a notice, at the time the plan is submitted for review under subdivision (d), of the availability of the plan for inspection or copying, at cost, by an interested person.

(f) Conduct a public hearing on the proposed county solid waste management plan before formal adoption. A notice shall be published not less than 30 days before a hearing in a newspaper having a major circulation within the county. The notice shall indicate a location where copies of the plan are available for public inspection and shall indicate the time and place of the public hearing.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11536 Request by municipality to be included in plan of adjacent county; approval by resolution; appeal; final decision; formal action on plan; return of plan with statement of objections; review and recommendations; approval by governing bodies; preparation of final plan by department.

Sec. 11536. (1) A municipality located in 2 counties or adjacent to a municipality located in another county may request to be included in the adjacent county's plan. Before the municipality may be included, the request shall be approved by a resolution of the county boards of commissioners of the counties involved. A

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municipality may appeal to the department a decision to exclude it from an adjacent county's plan. If there is an appeal, the department shall issue a decision within 45 days. The decision of the department is final.

(2) Except as provided in subsection (3), the county board of commissioners shall formally act on the plan following the public hearing required by section 11535(f).

(3) If a planning committee has been appointed by the county board of commissioners under section 11534(1), the county board of commissioners, or if a plan is prepared under section 11533(4), the municipalities in the county who voted in favor of filing a notice of intent to prepare a county solid waste management plan, shall take formal action on the plan after the completion of public hearings and only after the plan has been approved by a majority of the planning committee as provided in section 11534(1). If the county board of commissioners, or, if a plan is prepared under section 11533(4), a majority of the municipalities in the county who voted in favor of filing a notice of intent to prepare a county solid waste management plan, does or do not approve the plan as submitted, the plan shall be returned to the planning committee along with a statement of objections to the plan. Within 30 days after receipt, the planning committee shall review the objections and shall return the plan with its recommendations.

(4) Following approval the county plan shall be approved by the governing bodies of not less than 67% of the municipalities within each respective county before the plan may take effect.

(5) A county plan prepared by a regional solid waste management planning agency shall be approved by the governing bodies of not less than 67% of the municipalities within each respective county before the plan may take effect.

(6) If, after the plan has been adopted, the governing bodies of not less than 67% of the municipalities have not approved the plan, the department shall prepare a plan for the county, including those municipalities that did not approve the county plan. A plan prepared by the department shall be final.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11537 Approval or disapproval of plan by department; time; minimum requirements; periodic review; revisions or corrections; withdrawal of approval; timetable or schedule for compliance.

Sec. 11537. (1) The department shall, within 6 months after a plan has been submitted for approval, approve or disapprove the plan. An approved plan shall at a minimum meet the requirements set forth in section 11538(1).

(2) The department shall review an approved plan periodically and determine if revisions or corrections are necessary to bring the plan into compliance with this part. The department, after notice and opportunity for a public hearing held pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, may withdraw approval of the plan. If the department withdraws approval of a county plan, the department shall establish a timetable or schedule for compliance with this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11537a Use of siting mechanisms to site capacity.

Sec. 11537a. Beginning on June 9, 1994 a county that has a solid waste management plan that provides for siting of disposal areas to fulfill a 20-year capacity need through use of a siting mechanism, is only required to use its siting mechanisms to site capacity to meet a 10-year capacity need. If any county is able to demonstrate to the department that it has at least 66 months of available capacity, that county may refuse to utilize its siting mechanism until the county is no longer able to demonstrate 66 months of capacity or until the county amends its plan in accordance with this part to provide for the annual certification process described in section 11538.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

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324.11538 Rules for development, form, and submission of initial solid waste management plans; requirements; identification of specific sites; calculation of disposal need requirements; interim siting mechanism; annual certification process; new certification; disposal area serving disposal needs of another county, state, or country; compliance as condition to disposing of, storing, or transporting solid waste; provisions or practices in conflict with part.

Sec. 11538. (1) Not later than September 11, 1979, the director shall promulgate rules for the development, form, and submission of initial solid waste management plans. The rules shall require all of the following:

(a) The establishment of goals and objectives for prevention of adverse effects on the public health and on the environment resulting from improper solid waste collection, processing, or disposal including protection of surface and groundwater quality, air quality, and the land.

(b) An evaluation of waste problems by type and volume, including residential and commercial solid waste, hazardous waste, industrial sludges, pretreatment residues, municipal sewage sludge, air pollution control residue, and other wastes from industrial or municipal sources.

(c) An evaluation and selection of technically and economically feasible solid waste management options, which may include sanitary landfill, resource recovery systems, resource conservation, or a combination of options.

(d) An inventory and description of all existing facilities where solid waste is being treated, processed, or disposed of, including a summary of the deficiencies, if any, of the facilities in meeting current solid waste management needs.

(e) The encouragement and documentation as part of the solid waste management plan, of all opportunities for participation and involvement of the public, all affected agencies and parties, and the private sector.

(f) That the solid waste management plan contain enforceable mechanisms for implementing the plan, including identification of the municipalities within the county responsible for the enforcement and may contain a mechanism for the county and those municipalities to assist the department and the state police in implementing and conducting the inspection program established in section 11526(2) and (3). This subdivision does not preclude the private sector's participation in providing solid waste management services consistent with the solid waste management plan for the county.

(g) Current and projected population densities of each county and identification of population centers and centers of solid waste generation, including industrial wastes.

(h) That the solid waste management plan area has, and will have during the plan period, access to a sufficient amount of available and suitable land, accessible to transportation media, to accommodate the development and operation of solid waste disposal areas, or resource recovery facilities provided for in the plan.

(i) That the solid waste disposal areas or resource recovery facilities provided for in the solid waste management plan are capable of being developed and operated in compliance with state law and rules of the department pertaining to protection of the public health and the environment, considering the available land in the plan area, and the technical feasibility of, and economic costs associated with, the facilities.

(j) A timetable or schedule for implementing the solid waste management plan.

(2) Each solid waste management plan shall identify specific sites for solid waste disposal areas for a 5-year period after approval of a plan or plan update. In calculating disposal need requirements to measure compliance with this section, only those existing waste stream volume reduction levels achieved through source reduction, reuse, composting, recycling, or incineration, or any combination of these reduction devices, that can currently be demonstrated or that can be reasonably expected to be achieved through currently active implementation efforts for proposed volume reduction projects, may be assumed by the planning entity. In addition, if the solid waste management plan does not also identify specific sites for solid waste disposal areas for the remaining portion of the entire planning period required by this part after approval of a plan or plan update, the solid waste management plan shall include an interim siting mechanism and an annual certification process as described in subsections (3) and (4). In calculating the capacity of identified disposal areas to determine if disposal needs are met for the entire required planning period, full achievement of the solid waste management plan's volume reduction goals may be assumed by the planning entity if the plan identifies a detailed programmatic approach to achieving these goals. If a siting mechanism is not included, and disposal capacity falls to less than 5 years of capacity, a county shall amend the solid waste management plan for that county to resolve the shortfall.

(3) An interim siting mechanism shall include both a process and a set of minimum siting criteria, both of which are not subject to interpretation or discretionary acts by the planning entity, and which if met by an applicant submitting a disposal area proposal, will guarantee a finding of consistency with the plan. The

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interim siting mechanism shall be operative upon the call of the board of commissioners or shall automatically be operative whenever the annual certification process shows that available disposal capacity will provide for less than 66 months of disposal needs. In the latter event, applications for a finding of consistency from the proposers of disposal area capacity will be received by the planning agency commencing on January 1 following completion of the annual certification process. Once operative, an interim siting mechanism will remain operative for at least 90 days or until more than 66 months of disposal capacity is once again available, either by the approval of a request for consistency or by the adoption of a new annual certification process which concludes that more than 66 months of disposal capacity is available.

(4) An annual certification process shall be concluded by June 30 of each year, commencing on the first June 30 which is more than 12 months after the department's approval of the solid waste management plan or plan update. The certification process will examine the remaining disposal area capacity available for solid wastes generated within the planning area. In calculating disposal need requirements to measure compliance with this section, only those existing waste stream volume reduction levels achieved through source reduction, reuse, composting, recycling, or incineration, or any combination of these reduction devices, that can currently be demonstrated or that can be reasonably expected to be achieved through currently active implementation efforts for proposed volume reduction projects, may be assumed. The annual certification of disposal capacity shall be approved by the board of commissioners. Failure to approve an annual certification by June 30 is equivalent to a finding that less than a sufficient amount of capacity is available and the interim siting mechanism will then be operative on the first day of the following January. As part of the department's responsibility to act on construction permit applications, the department has final decision authority to approve or disapprove capacity certifications and to determine consistency of a proposed disposal area with the solid waste management plan.

(5) A board of commissioners may adopt a new certification of disposal capacity at any time. A new certification of disposal capacity shall supersede all previous certifications, and become effective 30 days after adoption by the board of commissioners and remain in effect until subsequent certifications are adopted.

(6) In order for a disposal area to serve the disposal needs of another county, state, or country, the service, including the disposal of municipal solid waste incinerator ash, must be explicitly authorized in the approved solid waste management plan of the receiving county. With regard to intercounty service within Michigan, the service must also be explicitly authorized in the solid waste management plan of the exporting county.

(7) A person shall not dispose of, store, or transport solid waste in this state unless the person complies with the requirements of this part.

(8) An ordinance, law, rule, regulation, policy, or practice of a municipality, county, or governmental authority created by statute, which prohibits or regulates the location or development of a solid waste disposal area, and which is not part of or not consistent with the approved solid waste management plan for the county, shall be considered in conflict with this part and shall not be enforceable.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 44, Imd. Eff. Mar. 29, 2004.

Constitutionality: US Supreme Court held that MCL 299.413a and 299.430(2) prohibiting private landfill operators from accepting out-of-county solid waste, unless authorized by county's solid waste management plan, are unconstitutional as a violation of the Commerce Clause. Fort Gratiot Landfill v Mich Dept of Nat Res, 504 US 353; 112 S Ct 2019; 119 L Ed2d 139 (1992).

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

Administrative rules: R 299.4101 et seq. of the Michigan Administrative Code.

324.11539 Plan update; approval; conditions; rules.

Sec. 11539. (1) The director shall not approve a plan update unless:

(a) The plan contains an analysis or evaluation of the best available information applicable to the plan area in regard to recyclable materials and all of the following:

(*i*) The kind and volume of material in the plan area's waste stream that may be recycled or composted.

(*ii*) How various factors do or may affect a recycling and composting program in the plan area. Factors shall include an evaluation of the existing solid waste collection system; materials market; transportation networks; local composting and recycling support groups, or both; institutional arrangements; the population in the plan area; and other pertinent factors.

(*iii*) An identification of impediments to implementing a recycling and composting program and recommended strategies for removing or minimizing impediments.

(*iv*) How recycling and composting and other processing or disposal methods could complement each other and an examination of the feasibility of excluding site separated material and source separated material from other processing or disposal methods.

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(*v*) Identification and quantification of environmental, economic, and other benefits that could result from the implementation of a recycling and composting program.

(*vi*) The feasibility of source separation of materials that contain potentially hazardous components at disposal areas. This subparagraph applies only to plan updates that are due after January 31, 1989.

(b) The plan either provides for recycling and composting recyclable materials from the plan area's waste stream or establishes that recycling and composting are not necessary or feasible or is only necessary or feasible to a limited extent.

(c) A plan that proposes a recycling or composting program, or both, details the major features of that program, including all of the following:

(*i*) The kinds and volumes of recyclable materials that will be recycled or composted.

(*ii*) Collection methods.

(*iii*) Measures that will ensure collection such as ordinances or cooperative arrangements, or both.

(*iv*) Ordinances or regulations affecting the program.

(*v*) The role of counties and municipalities in implementing the plan.

(*vi*) The involvement of existing recycling interests, solid waste haulers, and the community.

(*vii*) Anticipated costs.

(*viii*) On-going program financing.

(*ix*) Equipment selection.

(*x*) Public and private sector involvement.

(*xi*) Site availability and selection.

(*xii*) Operating parameters such as pH and heat range.

(d) The plan includes an evaluation of how the planning entity is meeting the state's waste reduction and recycling goals as established pursuant to section 11541(4).

(2) The director may promulgate rules as may be necessary to implement this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

Administrative rules: R 299.4101 et seq. of the Michigan Administrative Code.

324.11539a Plan update; submission to legislature; standard format.

Sec. 11539a. (1) The department shall prepare a proposed standard format for the submittal of updates to solid waste management plans. This proposed standard format shall be submitted to the standing committees of the legislature that address issues primarily pertaining to natural resources and the environment by November 1, 1994 for a 30-day review and comment period. Following this 30-day period, the department shall finalize the standard format and provide a copy of the standard format to each planning entity in the state that the department knows will be preparing an update to a solid waste management plan. The standard format shall be submitted to planning entities by January 1, 1995. Additionally, the department shall provide the standard format to any other person upon request.

(2) Notwithstanding any other provision of this part, the department shall not require planning entities to begin the process for updating solid waste management plans prior to January 1, 1995.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11540 Rules; sanitary design and operational standards.

Sec. 11540. Not later than September 11, 1979, the department shall submit to the legislature rules that contain sanitary design and operational standards for solid waste transporting units and disposal areas and otherwise implement this part. The rules shall include standards for hydrogeologic investigations; monitoring; liner materials; leachate collection and treatment, if applicable; groundwater separation distances; environmental assessments; methane gas control; soil erosion; sedimentation control; groundwater and surface water quality; noise and air pollution; and the use of floodplains and wetlands.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

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Administrative rules: R 299.4101 et seq. of the Michigan Administrative Code.

324.11540a Repealed. 2010, Act 345, Eff. Mar. 1, 2011.

Compiler's note: The repealed section pertained to promulgation of rules affecting inert material before March 1, 2011.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11541 State solid waste management plan; contents; duties of department.

Sec. 11541. (1) The state solid waste management plan shall consist of the state solid waste plan and all county plans approved or prepared by the department.

(2) The department shall consult and assist in the preparation and implementation of the county solid waste management plans.

(3) The department may undertake or contract for studies or reports necessary or useful in the preparation of the state solid waste management plan.

(4) The department shall promote policies that encourage resource recovery and establishment of waste-to-energy facilities.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11542 Municipal solid waste incinerator ash; disposal.

Sec. 11542. (1) Except as provided in subsection (5) and except for municipal solid waste incinerator ash that is described and used as provided in section 11506(6)(h), municipal solid waste incinerator ash shall be disposed of in 1 of the following:

(a) A landfill that meets all of the following requirements:

(*i*) The landfill is in compliance with this part and the rules promulgated under this part.

(*ii*) The landfill is used exclusively for the disposal of municipal solid waste incinerator ash.

(*iii*) The landfill design includes all of the following in descending order according to their placement in the landfill:

(A) A leachate collection system.

(B) A synthetic liner at least 60 mils thick.

(C) A compacted clay liner of 5 feet or more with a maximum hydraulic conductivity of 1×10^{-7} centimeters per second.

(D) A leak detection and leachate collection system.

(E) A compacted clay liner at least 3 feet thick with a maximum hydraulic conductivity of 1×10^{-7} centimeters per second or a synthetic liner at least 40 mils thick.

(b) A landfill that meets all of the following requirements:

(*i*) The landfill is in compliance with this part and the rules promulgated under this part.

(*ii*) The landfill is used exclusively for the disposal of municipal solid waste incinerator ash.

(*iii*) The landfill design includes all of the following in descending order according to their placement in the landfill:

(A) A leachate collection system.

(B) A composite liner, as defined in R 299.4102 of the Michigan administrative code.

(C) A leak detection and leachate collection system.

(D) A second composite liner.

(*iv*) If contaminants that may threaten the public health, safety, or welfare, or the environment are found in the leachate collection system described in subparagraph (*iii*)(C), the owner or operator of the landfill shall determine the source and nature of the contaminants and make repairs, to the extent practicable, that will prevent the contaminants from entering the leachate collection system. If the department determines that the source of the contaminants is caused by a design failure of the landfill, the department, notwithstanding an approved construction permit or operating license, may require landfill cells at that landfill that will be used for the disposal of municipal solid waste incinerator ash, which are under construction or will be constructed in the future at the landfill, to be constructed in conformance with improved design standards approved by the department. However, this subparagraph does not require the removal of liners or leak detection and leachate collection systems that are already in place in a landfill cell under construction.

(c) A landfill that is a monitorable unit, as defined in R 299.4104 of the Michigan administrative code, and

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that meets all of the following requirements:

(*i*) The landfill is in compliance with this part and the rules promulgated under this part.

(*ii*) The landfill is used exclusively for the disposal of municipal solid waste incinerator ash.

(*iii*) The landfill design includes all of the following in descending order according to their placement in the landfill:

(A) A leachate collection system.

(B) A synthetic liner at least 60 mils thick.

(C) Immediately below the synthetic liner, either 2 feet of compacted clay with a maximum hydraulic conductivity of 1×10^{-7} centimeters per second or a bentonite geocomposite liner, as specified in R 299.4914 of the Michigan administrative code.

(D) At least 10 feet of either natural or compacted clay with a maximum hydraulic conductivity of 1×10^{-7} centimeters per second, or equivalent.

(d) A landfill with a design approved by the department that will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the design requirements of subdivisions (a) to (c).

(e) A type II landfill, as described in R 299.4105 of the Michigan administrative code, if both of the following conditions apply:

(*i*) The ash was generated by a municipal solid waste incinerator that is designed to burn at a temperature in excess of 2500 degrees Fahrenheit.

(*ii*) The ash from any individual municipal solid waste incinerator is disposed of pursuant to this subdivision for a period not to exceed 60 days.

(2) Except as provided in subsection (3), a landfill that is constructed pursuant to the design described in subsection (1) shall be capped following its closure by all of the following in descending order:

(a) Six inches of top soil with a vegetative cover.

(b) Two feet of soil to protect against animal burrowing, temperature, erosion, and rooted vegetation.

(c) An infiltration collection system.

(d) A synthetic liner at least 30 mils thick.

(e) Two feet of compacted clay with a maximum hydraulic conductivity of 1×10^{-7} centimeters per second.

(3) A landfill that receives municipal solid waste incinerator ash under this section may be capped with a design approved by the department that will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the design requirements of subsection (2).

(4) If leachate is collected from a landfill under this section, the leachate shall be monitored and tested in accordance with this part and the rules promulgated under this part.

(5) As an alternative to disposal described in subsection (1), the owner or operator of a municipal solid waste incinerator may process municipal solid waste incinerator ash through mechanical or chemical methods, or both, to substantially diminish the toxicity of the ash or its constituents or limit the leachability of the ash or its constituents to minimize threats to human health and the environment, if processing is performed on the site of the municipal solid waste incinerator or at the site of a landfill described in subsection (1), if the process has been approved by the department as provided by rule, and if the ash is tested after processing in accordance with a protocol approved by the department as provided by rule. The department shall approve the process and testing protocol under this subsection only if the process and testing protocol will protect human health and the environment. In making this determination, the department shall consider all potential pathways of human and environmental exposure, including both short-term and long-term, to constituents of the ash that may be released during the reuse or recycling of the ash. The department shall consider requiring methods to determine the leaching, total chemical analysis, respirability, and toxicity of reused or recycled ash. A leaching procedure shall include testing under both acidic and native conditions. If municipal solid waste incinerator ash is processed in accordance with the requirements of this subsection and the processed ash satisfies the testing protocol approved by the department as provided by rule, the ash may be disposed of in a municipal solid waste landfill, as defined by R 299.4104 of the Michigan administrative code, licensed under this part or may be used in any manner approved by the department. If municipal solid waste incinerator ash is processed as provided in this subsection, but does not satisfy the testing protocol approved by the department as provided by rule, the ash shall be disposed of in accordance with subsection (1).

(6) The disposal of municipal solid waste incinerator ash within a landfill that is in compliance with subsection (1) does not constitute a new proposal for which a new construction permit is required under section 11509, if a construction permit has previously been issued under section 11509 for the landfill and the owner or operator of the landfill submits 6 copies of an operating license amendment application to the department for approval pursuant to part 13. The operating license amendment application shall include

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revised plans and specifications for all facility modifications including a leachate disposal plan, an erosion control plan, and a dust control plan which shall be part of the operating license amendment. The dust control plan shall contain sufficient detail to ensure that dust emissions are controlled by available control technologies that reduce dust emissions by a reasonably achievable amount to the extent necessary to protect human health and the environment. The dust control plan shall provide for the ash to be wet during all times that the ash is exposed to the atmosphere at the landfill or otherwise to be covered by daily cover material; for dust emissions to be controlled during dumping, grading, loading, and bulk transporting of the ash at the landfill; and for dust emissions from access roads within the landfill to be controlled. With the exception of a landfill that is in existence on June 12, 1989 that the department determines is otherwise in compliance with this section, the owner or operator of the landfill shall obtain the operating license amendment prior to initiating construction. Prior to operation, the owner or operator of a landfill shall submit to the department certification from a licensed professional engineer that the landfill has been constructed in accordance with the approved plan and specifications. When the copies are submitted to the department, the owner or operator of the landfill shall send a copy of the operating license amendment application to the municipality where the landfill is located. At least 30 days prior to making a final decision on the operating license amendment, the department shall hold at least 1 public meeting in the vicinity of the landfill to receive public comments. Prior to a public meeting, the department shall publish notice of the meeting in a newspaper serving the local area.

(7) The owner or operator of a municipal solid waste incinerator or a disposal area that receives municipal solid waste incinerator ash shall allow the department access to the facility for the purpose of supervising the collection of samples or obtaining samples of ash to test or to monitor air quality at the facility.

(8) As used in subsection (1), "landfill" means a landfill or a specific portion of a landfill.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2014, Act 178, Eff. Sept. 16, 2014.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11543 Municipal solid waste incinerator ash; transportation.

Sec. 11543. (1) If municipal solid waste incinerator ash is transported, it shall be transported in compliance with section 720 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.720 of the Michigan Compiled Laws.

(2) If municipal solid waste incinerator ash is transported by rail, it shall be transported in covered, leakproof railroad cars.

(3) The outside of all vehicles and accessory equipment used to transport municipal solid waste incinerator ash shall be kept free of the ash.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11544 List of laboratories capable of performing test provided for in MCL 324.11542; compilation; publication; definitive testing; fraudulent or careless testing.

Sec. 11544. (1) The department shall compile a list of approved laboratories that are capable of performing the test provided for in section 11542.

(2) The department shall publish the list compiled under subsection (1) on or before July 1, 1989, and shall after that date make the list available to any person upon request.

(3) Except as provided in subsection (4), a test conducted by an approved laboratory from the list compiled under subsection (1) is definitive for purposes of this part.

(4) If the department has reason to believe that test results provided by an approved laboratory are fraudulent or that a test was carelessly performed, the department may conduct its own test or may have an additional test performed at the department's expense.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11545 Incineration of used oil prohibited; “oil” defined.

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Sec. 11545. Beginning June 21, 1993, a municipal solid waste incinerator shall not incinerate used oil. As used in this section, used oil has the meaning ascribed to this term in part 167.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11546 Action for appropriate relief; penalties for violation or noncompliance; restoration; return; civil action.

Sec. 11546. (1) The department or a health officer may request that the attorney general bring an action in the name of the people of the state, or a municipality or county may bring an action based on facts arising within its boundaries, for any appropriate relief, including injunctive relief, for a violation of this part or rules promulgated under this part.

(2) In addition to any other relief provided by this section, the court may impose on any person who violates any provision of this part or rules promulgated under this part or who fails to comply with any permit, license, or final order issued pursuant to this part a civil fine as follows:

(a) Except as provided in subdivision (b), a civil fine of not more than $10,000.00 for each day of violation.

(b) For a second or subsequent violation, a civil fine of not more than $25,000.00 for each day of violation.

(3) In addition to any other relief provided by this section, the court may order a person who violates this part or the rules promulgated under this part to restore, or to pay to the state an amount equal to the cost of restoring, the natural resources of this state affected by the violation to their original condition before the violation, and to pay to the state the costs of surveillance and enforcement incurred by the state as a result of the violation.

(4) In addition to any other relief provided by this section, the court shall order a person who violates section 11526e to return, or to pay to the state an amount equal to the cost of returning, the solid waste that is the subject of the violation to the country in which that waste was generated.

(5) This part does not preclude any person from commencing a civil action based on facts that may also constitute a violation of this part or the rules promulgated under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 41, Imd. Eff. Mar. 29, 2004;—Am. 2006, Act 56, Imd. Eff. Mar. 13, 2006.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11547 Grant program; establishment; purpose; interlocal agreements; separate planning grant; appropriation; use of grant funds by department; rules; financial assistance to certified health department.

Sec. 11547. (1) In order for a county to effectively implement the planning responsibilities designated under this part, a grant program is established to provide financial assistance to county or regional solid waste management planning agencies. Municipalities joined together with interlocal agreements relating to solid waste management plans, within a county having a city of a population of more than 750,000, are eligible for a separate planning grant in addition to those granted to counties. This separate grant allocation provision does not alter the planning and approval process requirements for county plans as specified in this part. Eighty percent of the money for the program not provided for by federal funds shall be appropriated annually by the legislature from the general fund of the state and 20% shall be appropriated by the applicant. Grant funds appropriated for local planning may be used by the department if the department finds it necessary to invoke the department's authority to develop a local plan under section 11533(6). The department shall promulgate rules for the distribution of the appropriated funds.

(2) In order for a certified health department to effectively implement the responsibilities designated under this part, an annual grant shall be appropriated by the legislature from the general fund of the state to provide financial assistance to a certified health department. A certified health department is eligible to receive 100% of reasonable personnel costs as determined by the department based on criteria established by rule. The department shall promulgate rules for the distribution of the appropriated funds.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 466, Imd. Eff. Jan. 4, 1999.

Popular name: Act 451

Popular name: NREPA

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Popular name: Solid Waste Act

324.11548 Private sector; legislative intent; salvaging not prohibited.

Sec. 11548. (1) This part is not intended to prohibit the continuation of the private sector from doing business in solid waste disposal and transportation. This part is intended to encourage the continuation of the private sector in the solid waste disposal and transportation business when in compliance with the minimum requirements of this part.

(2) This part is not intended to prohibit salvaging.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11549 Violation as misdemeanor; violation as felony; penalty; separate offenses.

Sec. 11549. (1) A person who violates this part, a rule promulgated under this part, or a condition of a permit, license, or final order issued pursuant to this part is guilty of a misdemeanor punishable by a fine of not more than $1,000.00 for each violation and costs of prosecution and, if in default of payment of fine and costs, imprisonment for not more than 6 months.

(2) A person who knowingly violates section 11526e is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $5,000.00, or both.

(3) Each day upon which a violation described in this section occurs is a separate offense.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2006, Act 58, Imd. Eff. Mar. 13, 2006.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11550 Solid waste management fund; creation; deposit of money into fund; establishment of solid waste staff account and perpetual care account; expenditures; report.

Sec. 11550. (1) The solid waste management fund is created within the state treasury. The state treasurer may receive money from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(2) Money in the solid waste management fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(3) The state treasurer shall establish, within the solid waste management fund, a solid waste staff account and a perpetual care account.

(4) Money shall be expended from the solid waste staff account, upon appropriation, only for the following purposes:

(a) Preparing generally applicable guidance regarding the solid waste permit and license program or its implementation or enforcement.

(b) Reviewing and acting on any application for a permit or license, permit or license revision, or permit or license renewal, including the cost of public notice and public hearings.

(c) Performing an advisory analysis under section 11510(1).

(d) General administrative costs of running the permit and license program, including permit and license tracking and data entry.

(e) Inspection of licensed disposal areas and open dumps.

(f) Implementing and enforcing the conditions of any permit or license.

(g) Groundwater monitoring audits at disposal areas which are or have been licensed under this part.

(h) Reviewing and acting upon corrective action plans for disposal areas which are or have been licensed under this part.

(i) Review of certifications of closure.

(j) Postclosure maintenance and monitoring inspections and review.

(k) Review of bonds and financial assurance documentation at disposal areas which are or have been licensed under this part.

(5) Money shall be expended from the perpetual care account only for the purpose of conducting the following activities at disposal areas which are or have been licensed under this part:

(a) Postclosure maintenance and monitoring at a disposal area where the owner or operator is no longer required to do so.

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(b) To conduct closure, or postclosure maintenance and monitoring and corrective action if necessary, at a disposal area where the owner or operator has failed to do so. Money shall be expended from the account only after funds from any perpetual care fund or other financial assurance mechanisms held by the owner or operator have been expended and the department has used reasonable efforts to obtain funding from other sources.

(6) By March 1 annually, the department shall prepare and submit to the governor, the legislature, the chairs of the standing committees of the senate and house of representatives with primary responsibility for issues related to natural resources and the environment, and the chairs of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the activities of the previous fiscal year funded by the staff account of the solid waste management fund established in this section. This report shall include, at a minimum, all of the following as it relates to the department:

(a) The number of full-time equated positions performing solid waste management permitting, compliance, and enforcement activities.

(b) All of the following information related to the construction permit applications received under section 11509:

(*i*) The number of applications received by the department, reported as the number of applications determined to be administratively incomplete and the number determined to be administratively complete.

(*ii*) The number of applications determined to be administratively complete for which a final action was taken by the department. The number of final actions shall be reported as the number of applications approved, the number of applications denied, and the number of applications withdrawn by the applicant.

(*iii*) The percentage and number of applications determined to be administratively complete for which a final decision was made within 120 days of receipt as required by section 11511.

(c) All of the following information related to the operating license applications received under section 11512:

(*i*) The number of applications received by the department, reported as the number of applications determined to be administratively incomplete and the number determined to be administratively complete.

(*ii*) The number of applications determined to be administratively complete for which a final action was taken by the department. The number of final actions shall be reported as the number of applications approved, the number of applications denied, and the number of applications withdrawn by the applicant.

(*iii*) The percentage and number of applications determined to be administratively complete for which a final decision was made within 90 days of receipt as required by section 11516.

(d) The number of inspections conducted at licensed disposal areas as required by section 11519.

(e) The number of letters of warning sent to licensed disposal areas.

(f) The number of contested case hearings and civil actions initiated and completed, the number of voluntary consent orders and administrative orders entered or issued, and the amount of fines and penalties collected through such actions or orders.

(g) For each enforcement action that includes a penalty, a description of what corrective actions were required by the enforcement action.

(h) The number of solid waste complaints received, investigated, resolved, and not resolved by the department.

(i) The amount of revenue in the staff account of the solid waste management fund at the end of the fiscal year.

History: Add. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2003, Act 153, Eff. Oct. 1, 2003.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11551 Beneficial use by-product; qualification; requirements; analysis of representative sample by initial generator; determination; storage and use; beneficial uses 1 and 2 at and along roadways; registration or licensure under MCL 290.531 to 290.538; submission of information; open dumping; notice to prospective transferee.

Sec. 11551. (1) Except for a material that the department approves as a beneficial use by-product under section 11553(3) or (4), to qualify as a beneficial use by-product, a material or the use of the material, as applicable, shall meet all of the following requirements:

(a) The material is not a part 111 hazardous waste or mixed with a hazardous waste.

(b) The material is not stored at the site of generation or use for more than 3 years, or the amount that is

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transferred off site for use during a 3-year period equals at least 75% by weight or volume of the amount of that material stored on site for beneficial use at the beginning of the 3-year period.

(c) The material is stored in a manner that maintains its usefulness, controls wind dispersal, and prevents loss of the material beyond the storage area.

(d) The material is stored in a manner that does not cause groundwater to no longer be fit for 1 or more protected uses, does not cause a violation of a part 31 surface water quality standard, and otherwise does not violate part 31.

(e) The material is transported in a manner that prevents accidental leakage, spillage, or wind dispersal.

(f) The use of the material is for a legitimate beneficial purpose other than a means to discard the material and the material is used according to generally accepted engineering, industrial, or commercial standards for that use.

(g) For beneficial use 2, the material, if specified below, meets the following environmental standards using, at the option of the generator of the by-product, EPA method 1311, 1312, or ASTM test method 3987:

Constituent-maximum leachate mg/l	Coal ash or wood ash	Pulp and paper mill ash, mixed wood ash	Foundry sand	Cement kiln dust, lime kiln dust	Water softening limes, dewatered grinding sludge	Stamp sand	Spent media from sand blasting
Arsenic – 0.2	X	X	X	X	X		
Boron – 10	X						
Cadmium – 0.1	X	X		X	X		
Chromium – 2.0	X						X
Lead – 0.08	X	X	X	X	X		
Mercury – 0.04	X	X		X	X		
Copper – 20		X			X	X	
Nickel – 2.0		X	X		X		X
Selenium – 1.0	X				X		
Thallium – 0.04	X			X			
Zinc – 48	X	X			X		

(h) For beneficial use 3, the material or use of the material, as applicable, meets all of the following requirements:

(*i*) The material is coal bottom ash, wood ash, pulp and paper mill material, pulp and paper mill ash, mixed wood ash, foundry sand from ferrous or aluminum foundries, cement kiln dust, lime kiln dust, lime water softening residuals, flue gas desulfurization gypsum, soil washed or otherwise removed from sugar beets, or dewatered concrete grinding slurry from public transportation agency road projects.

(*ii*) The amount of any constituent listed below applied to an area of land over any period of time does not exceed the following:

CONSTITUENT	CUMULATIVE LOAD POUNDS PER ACRE
Arsenic	37
Cadmium	35
Copper	1,335
Lead	267
Mercury	15
Nickel	374
Selenium	89
Zinc	2,492

(*iii*) If the department of agriculture and rural development determines, based on peer-reviewed scientific literature, that any other constituent is subject to a cumulative loading requirement, the amount of that constituent applied to an area of land over any period of time does not exceed that cumulative loading

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requirement. The cumulative load for that constituent shall be calculated as follows: constituent concentration (mg/kg dry weight) x conversion factor of 0.002 (concentration to pounds per dry ton) x the material application rate in dry tons per acre.

(i) For beneficial use 5, the material is foundry sand from ferrous or aluminum foundries and representative sampling of the foundry sand using either a totals analysis, a leachate analysis (using EPA method 1311, EPA method 1312, ASTM method 3987, or other leaching protocol approved by the department), or any combination of the 2 types of analyses demonstrates that none of the following maximum concentrations are exceeded:

CONSTITUENT	TOTALS ANALYSIS MG/KG	LEACHATE ANALYSIS MG/L
Antimony	4.3	0.006
Cobalt	0.8	0.04
Copper	5,800	1
Iron	23,185	2.0
Lead	700	0.004
Manganese	1,299	0.86
Molybdenum	5	0.073
Nickel	100	0.1
Thallium	2.3	0.002
Vanadium	72	0.0045
Zinc	2,400	2.4
Benzene	0.1	0.005
Formaldehyde	26	1.3
Phenol	88	4.4
Trichloroethylene	0.1	0.005

(2) The determination whether a material meets the requirements of subsection (1)(a) or (g) shall be based on the analysis of a representative sample of the material by the initial generator. The initial generator shall maintain records of the test results for not less than 10 years after the date the material was sent off site and make the records available to the department upon request. The generator shall resample and analyze the material when raw materials or processes change in a way that could reasonably be expected to materially affect analysis results.

(3) Except as otherwise provided in this act, storage and use of beneficial use by-products shall comply with all other applicable provisions of this act.

(4) The storage of a material for beneficial use 3 that complies with regulation no. 641, commercial fertilizer bulk storage, R 285.641.1 to R 285.641.18 of the Michigan administrative code, shall be considered to comply with the storage requirements of this part.

(5) A person that actively manages and reuses a beneficial use by-product that has already been used in compliance with this part may rely on analytical data from the prior use.

(6) All of the following apply to beneficial uses 1 and 2 at and along roadways:

(a) Routine repair and replacement of roadways constructed using beneficial use materials does not constitute generation of beneficial use by-products triggering the requirements of this section if the beneficial use by-products remain or are reused at the same roadway and are used in a manner that meets the definition of beneficial use 1 or beneficial use 2, as appropriate. If the beneficial use by-products will be reused at some place other than the same roadway, then the requirements applicable to generators of beneficial use by-products must be met, except as follows:

(*i*) As set forth in subsection (5).

(*ii*) The requirements of section 11552 apply only if the category of beneficial use will change.

(b) For beneficial use 2, the requirement that beneficial use materials be covered by concrete, asphalt, or 6 inches of gravel applies at the time of placement and use. The development of potholes, shoulder erosion, or similar deterioration does not result in a violation of this part.

(c) If road materials containing beneficial use by-products are ground, reheated, or melted for reuse, the requirements of part 55 must be met.

(d) This part does not prohibit the state transportation department from seeking additional data or information for road building materials or from requiring that road building materials meet state transportation department specifications and standards.

(7) For beneficial use 3, the material that is offered for sale or use shall be annually registered or licensed under part 85 or 1955 PA 162, MCL 290.531 to 290.538. In addition to the information required under part 85 or 1955 PA 162, MCL 290.531 to 290.538, the following information shall be submitted to the department of

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agriculture and rural development with the license or registration application:

(a) Directions for use to ensure that the material is applied at an agronomic rate that has been reviewed by a certified crop advisor.

(b) A laboratory analysis report that contains all of the following:

(*i*) Sampling results that demonstrate that the material does not pose harm to human health or the environment. One method by which this demonstration can be made is by sampling results that comply with both of the following:

(A) The levels established pursuant to the association of American plant food control officials' statement of uniform interpretation and policy #25, as follows:

(I) A fertilizer with a phosphorus or micronutrient guarantee shall apply the policy in its entirety.

(II) A fertilizer with only a nitrogen, potassium, or secondary nutrient guarantee shall use the micronutrients column in the policy and apply a multiplier of 1 to determine the maximum allowable concentration of each metal.

(III) A soil conditioner or liming material shall use the micronutrients column in the policy and apply a multiplier of 1 to determine the maximum allowable concentration of each metal.

(B) The part 201 generic residential soil direct contact cleanup criteria for volatile organic compounds (as determined by U.S. EPA method 8260), semivolatile organic compounds (as determined by U.S. EPA method 8270c), and dioxins (as determined by U.S. EPA method 1613b). Results for dioxins shall be reported on a dry weight basis, and total dioxin equivalence shall be calculated and reported utilizing the U.S. EPA toxic equivalency factors (U.S. EPA/100/R10/005).

(*ii*) For a fertilizer, all of the following used by a certified crop advisor to determine an agronomic rate consistent with generally accepted agricultural and management practices:

(A) A demonstration that the material contains the minimum percentage of each plant nutrient guaranteed or claimed to be present.

(B) The percentage of dry solids, nitrogen, ammonium nitrogen, nitrate nitrogen, phosphorus, and potassium in the material.

(C) The levels of calcium, magnesium, acidity or basicity measured by pH, sulfur, chromium, copper, silver, chlorine, and boron.

(*iii*) For a soil conditioner or a liming material, all of the following used by a certified crop advisor to determine an agronomic rate consistent with generally accepted agricultural and management practices:

(A) The percentage of dry solids in the material.

(B) The levels of calcium, magnesium, acidity or basicity measured by pH, sulfur, chromium, copper, silver, chlorine, and boron.

(*iv*) For a soil conditioner, scientifically acceptable data that give reasonable assurance that the material will improve the physical nature of the soil by altering the soil structure by making soil nutrients more available or otherwise enhancing the soil media resulting in beneficial crop response or other plant growth.

(*v*) For a liming material, scientifically acceptable data demonstrating that the material will correct soil acidity.

(8) When a material is licensed or registered as described in subsection (7), the laboratory analysis report and the scientifically acceptable data submitted with a prior application may be resubmitted for a subsequent application unless the raw materials or processes used to generate the material change in a way that could reasonably be expected to materially affect the laboratory analysis report or scientifically acceptable data.

(9) This part does not authorize open dumping prohibited by the solid waste disposal act, 42 USC 6901 to 6992k.

(10) If an owner of property has knowledge that a material has been used on the property for beneficial use 2, before transferring the property, the owner shall provide notice to a prospective transferee that the material was used for beneficial use 2, including the date and location of the use, if known. If a contractor, consultant, or agent of an owner of property uses a material on the property for beneficial use 2, the contractor, consultant, or agent shall provide notice to the owner that the material was used for beneficial use 2, including the date and location of the use.

History: Add. 2014, Act 178, Eff. Sept. 16, 2014.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11551a Beneficial use by-product not required.

Sec. 11551a. This part does not require the use of any beneficial use by-product, including, but not limited

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to, the uses and beneficial use by-products identified in sections 11502 to 11506, by any governmental entity or any other person.

History: Add. 2014, Act 178, Eff. Sept. 16, 2014.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11552 Notice; report; confidentiality.

Sec. 11552. (1) Written notice shall be submitted to the department before a beneficial use by-product is used for beneficial use 2 as construction fill at a particular site for the first time, if the amount used will exceed 5,000 cubic yards. The generator of the beneficial use by-product shall submit the notice unless the generator transfers material to a broker, in which case the broker shall submit the notice.

(2) By October 30 of each year, any generator or broker of more than 1,000 cubic yards of material used as beneficial use by-products for beneficial use 1, 2, or 4 in the immediately preceding period of October 1 to September 30 or any person that uses or reuses more than 1,000 cubic yards of a source separated material in that period shall submit a report to the department containing all of the following information, as applicable:

(a) The business name, address, telephone number, and name of a contact person for the generator, broker, or other person.

(b) The types and approximate amounts of beneficial use by-products generated, brokered, and stored during that period.

(c) The approximate amount of beneficial use by-products shipped off site during that period and the uses and conditions of use.

(d) The amount of source separated materials used or reused.

(3) A generator or broker may designate the information required in the report under subsection (2)(b) and (c) as confidential business information. If the scope of a request for public records under section 5 of the freedom of information act, 1976 PA 442, MCL 15.235, includes information designated by the generator or broker as confidential, the department shall promptly notify the generator or broker of the request, including the date the request was received by the department and, pursuant to that section, shall issue a notice extending for 10 business days the period during which the department shall respond to the request. The department shall grant the request for the information unless, within 12 business days after the date the request was received by the department, the generator or broker demonstrates to the satisfaction of the department that the information designated as confidential should not be disclosed because the information constitutes a trade secret or secret process or is production or commercial information the disclosure of which would jeopardize the competitive position of the generator or broker. If there is a dispute over the release of information between the generator or broker and the person requesting the information, the director shall grant or deny the request. The department shall notify the generator or broker of a decision to grant the request at least 2 days before the release of the requested information.

History: Add. 2014, Act 178, Eff. Sept. 16, 2014.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11553 Promoting and fostering use of wastes and by-products for recycling or beneficial purposes; approval of material, use, or material and use; request; approval or denial by department; determination made prior to effective date of amendatory act.

Sec. 11553. (1) Consistent with the requirements of this part, the department shall apply this section so as to promote and foster the use of wastes and by-products for recycling or beneficial purposes.

(2) Any person may request the department, consistent with the definitions and other terms of this part, to approve a material, a use, or a material and use as a source separated material; a beneficial use by-product for beneficial use 1, 2, 4, or 5; an inert material; a low-hazard industrial waste; or another material, use, or material and use that can be approved under this part. Among other things, a person may request the department to approve a use that does not qualify as beneficial use 2 under section 11502(4)(a) because the property is not nonresidential property or under section 11502(4)(a), (b), or (c) because the material exceeds 4 feet in thickness. A request under this subsection shall contain a description of the material including the process generating it; results of analyses of representative samples of the material for any hazardous substances that the person has knowledge or reason to believe could be present in the material, based on its source, its composition, or the process that generated it; and, if applicable, a description of the proposed use.

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The analysis and sampling of the material under this subsection shall be consistent with the methods contained in the EPA document entitled "test methods for the evaluation of solid waste, physical/chemical methods," SW 846 3rd edition; 1 or more peer-reviewed standards developed by a national or international organization, such as ASTM international; or 1 or more standards or methods approved by the department or the EPA. The department shall approve or deny the request within 150 days after the request is received, unless the parties agree to an extension. If the department determines that the request does not include sufficient information, the department shall, not more than 60 days after receipt of the request, notify the requester. The notice shall specify the additional information that is required. The 150-day period is tolled until the requestor submits the information specified in the notice. If the department approves a request under this subsection, the approval shall include the following statement: "This approval does not require any use of any beneficial use by-product by a governmental entity or any other person." The department may impose conditions and other requirements consistent with the purposes of this part on a material, a use, or a material and use approved under this section that are reasonably necessary for the use. If a request is approved with conditions or other requirements, the approval shall specifically state the conditions or other requirements. If the request is denied, the department's denial shall, to the extent practical, state with specificity all of the reasons for denial. If the department fails to approve or deny the request within the 150-day period, the request is considered approved. A person requesting approval under this subsection may seek review of any final department decision pursuant to section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

(3) The department shall approve a material for a specified use as a beneficial use by-product if all of the following requirements are met:

(a) The material is an industrial or commercial material that is or has the potential to be generated in high volumes.

(b) The proposed use serves a legitimate beneficial purpose other than providing a means to discard the material.

(c) A market exists for the material or there is a reasonable potential for the creation of a new market for the material if it is approved as a beneficial use by-product.

(d) The material and use meet all federal and state consumer protection and product safety laws and regulations.

(e) The material meets all of the following requirements:

(*i*) Hazardous substances in the material do not pose a direct contact health hazard to humans.

(*ii*) The material does not leach, decompose, or dissolve in a way that forms an unacceptably contaminated leachate. An unacceptably contaminated leachate is one that exceeds either part 201 generic residential groundwater drinking water criteria or surface water quality standards established under part 31.

(*iii*) The material does not produce emissions that violate part 55 or that create a nuisance.

(4) The department may approve a material for a specified use as a beneficial use by-product if the material meets the requirements of subsection (3)(a), (b), (c), and (d) but fails to meet the requirements of subsection (3)(e) and if the department determines that the material and use are protective of the public health and environment. In making the determination, the department shall consider the potential for exposure and risk to human health and the environment given the nature of the material, its proposed use, and the environmental fate and transport of any hazardous substances in the material in soil, groundwater, or other relevant media.

(5) The department shall approve a material as inert if all of the following requirements are met:

(a) The material is proposed to be used for a legitimate purpose other than a means to dispose of the material.

(b) Hazardous substances in the material do not pose a direct contact health hazard to humans.

(c) The material does not leach, decompose, or dissolve in a way that forms an unacceptably contaminated leachate upon contact with water or other liquids likely to be found at the area of placement, disposal, or use. An unacceptably contaminated leachate is leachate that exceeds part 201 generic residential groundwater drinking water criteria or surface water quality standards established under part 31.

(d) The material does not produce emissions that violate part 55 or that create a nuisance.

(6) The department may approve a material as inert if the material meets the requirements of subsection (5)(a) but fails to meet the requirements of subsection (5)(b), (c), or (d) and if the department determines that the material is protective of the public health and environment. In making the determination, the department shall consider the potential for exposure and risk to human health and the environment given the nature of the material, its proposed use, and the environmental fate and transport of any hazardous substances in the material in soil, groundwater, or other relevant media.

(7) The department shall approve a material as a low-hazard industrial waste if hazardous substances in representative samples of the material do not leach, using, at the option of the generator, EPA method 1311,

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1312, or any other method approved by the department that more accurately simulates mobility, above the higher of the following:

(a) One-tenth the hazardous waste toxicity characteristic threshold as set forth in rules promulgated under part 111.

(b) Ten times the generic residential groundwater drinking water cleanup criteria as set forth in rules promulgated under part 201.

(8) The department shall approve a material as a source separated material if the person who seeks the designation demonstrates that the material can be recycled or converted into raw materials or new products by being returned to the original process from which it was generated, by use or reuse as an ingredient in an industrial process to make a product, or by use or reuse as an effective substitute for a commercial product. To qualify as a source separated material, the material, product, or reuse must meet all federal and state consumer protection and product safety laws and regulations and must not create a nuisance. If a material will be applied to or placed on the land, or will be used to produce products that are applied to or placed on the land, the material must qualify as an inert material or beneficial use by-product.

(9) Any written determination by the department made prior to the effective date of the amendatory act that added this section designating a material as an inert material, an inert material appropriate for general reuse, an inert material appropriate for reuse at a specific location, an inert material appropriate for specific reuse instead of virgin material, a source separated material, a site separated material, a low-hazard industrial waste, or a non-solid-waste material remains in effect according to its terms or until forfeited in writing by the person who received the determination. Upon termination, expiration, or forfeiture of the written determination, the current requirements of this part control. The amendments made to this part by the amendatory act that added this section do not rescind, invalidate, limit, or modify any such prior determination in any way.

History: Add. 2014, Act 178, Eff. Sept. 16, 2014.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11554 Administration and enforcement of part.

Sec. 11554. The department of agriculture and rural development, and not the department of environmental quality, shall administer and enforce this part in connection with any material that is licensed or registered under part 85 or 1955 PA 162, MCL 290.531 to 290.538.

History: Add. 2014, Act 178, Eff. Sept. 16, 2014.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

PART 117
SEPTAGE WASTE SERVICERS

324.11701 Definitions.

Sec. 11701. As used in this part:

(a) "Agricultural land" means land on which a food crop, a feed crop, or a fiber crop is grown, including land used or suitable for use as a range or pasture; a sod farm; or a Christmas tree farm.

(b) "Certified health department" means a city, county, or district department of health certified under section 11716.

(c) "Cesspool" means a cavity in the ground that receives waste to be partially absorbed directly or indirectly by the surrounding soil.

(d) "Department" means the department of environmental quality or its authorized agent.

(e) "Director" means the director of the department of environmental quality or his or her designee.

(f) "Domestic septage" means liquid or solid material removed from a septic tank, cesspool, portable toilet, type III marine sanitation device, or similar storage or treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar facility that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease interceptor, grease trap, or other appurtenance used to retain grease or other fatty substances contained in restaurant waste.

(g) "Domestic sewage" means waste and wastewater from humans or household operations.

(h) "Domestic treatment plant septage" means biosolids generated during the treatment of domestic sewage

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in a treatment works and transported to a receiving facility or managed in accordance with a residuals management program approved by the department.

(i) "Food establishment septage" means material pumped from a grease interceptor, grease trap, or other appurtenance used to retain grease or other fatty substances contained in restaurant wastes and that is blended into a uniform mixture, consisting of not more than 1 part of that restaurant-derived material per 3 parts of domestic septage, prior to land application or disposed of at a receiving facility.

(j) "Fund" means the septage waste program fund created in section 11717.

(k) "Governmental unit" means a county, township, municipality, or regional authority.

(*l*) "Incorporation" means the mechanical mixing of surface-applied septage waste with the soil.

(m) "Injection" means the pressurized placement of septage waste below the surface of soil.

(n) "Operating plan" means a plan developed by a receiving facility for receiving septage waste that specifies at least all of the following:

(*i*) Categories of septage waste that the receiving facility will receive.

(*ii*) The receiving facility's service area.

(*iii*) The hours of operation for receiving septage waste.

(*iv*) Any other conditions for receiving septage waste established by the receiving facility.

(o) "Pathogen" means a disease-causing agent. Pathogen includes, but is not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

(p) "Peace officer" means a sheriff or sheriff's deputy, a village or township marshal, an officer of the police department of any city, village, or township, any officer of the Michigan state police, any peace officer who is trained and licensed or certified under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615, or any conservation officer appointed by the department or the department of natural resources under section 1606.

(q) "Portable toilet" means a receptacle for human waste temporarily in a location for human use.

(r) "Receiving facility" means a structure that is designed to receive septage waste for treatment at a wastewater treatment plant or at a research, development, and demonstration project authorized under section 11511b to which the structure is directly connected, and that is available for that purpose as provided for in an ordinance of the local unit of government where the structure is located or in an operating plan. Receiving facility does not include either of the following:

(*i*) A septic tank.

(*ii*) A structure or a wastewater treatment plant where the disposal of septage waste is prohibited by order of the department under section 11708 or 11715b.

(s) "Receiving facility service area" or "service area" means the territory for which a receiving facility has the capacity and is available to receive and treat septage waste, except that the geographic service area of a receiving facility shall not extend more than 25 radial miles from the receiving facility.

(t) "Sanitary sewer cleanout septage" means sanitary sewage or cleanout residue removed from a separate sanitary sewer collection system that is not land applied and that is transported by a vehicle licensed under this part elsewhere within the same system or to a receiving facility that is approved by the department.

(u) "Septage waste" means the fluid mixture of untreated and partially treated sewage solids, liquids, and sludge of human or domestic origin that is removed from a wastewater system. Septage waste consists only of food establishment septage, domestic septage, domestic treatment plant septage, or sanitary sewer cleanout septage, or any combination of these.

(v) "Septage waste servicing license" means a septage waste servicing license as provided for under sections 11703 and 11706.

(w) "Septage waste vehicle" means a vehicle that is self-propelled or towed and that includes a tank used to transport septage waste. Septage waste vehicle does not include an implement of husbandry as defined in section 21 of the Michigan vehicle code, 1949 PA 300, MCL 257.21.

(x) "Septage waste vehicle license" means a septage waste vehicle license as provided for under sections 11704 and 11706.

(y) "Septic tank" means a septic toilet, chemical closet, or other enclosure used for the decomposition of domestic sewage.

(z) "Service" or "servicing" means cleaning, removing, transporting, or disposing, by application to land or otherwise, of septage waste.

(aa) "Site" means a location or locations on a parcel or tract, as those terms are defined in section 102 of the land division act, 1967 PA 288, MCL 560.102, proposed or used for the disposal of septage waste on land.

(bb) "Site permit" means a permit issued under section 11709 authorizing the application of septage waste to a site.

(cc) "Storage facility" means a structure that receives septage waste for storage but not for treatment.

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(dd) "Tank" means an enclosed container placed on a septage waste vehicle to carry or transport septage waste.

(ee) "Type I public water supply", "type IIa public water supply", "type IIb public water supply", and "type III public water supply" mean those terms, respectively, as described in R 325.10502 of the Michigan Administrative Code.

(ff) "Type III marine sanitation device" means that term as defined in 33 CFR 159.3.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004;—Am. 2005, Act 199, Eff. Nov. 22, 2005;—Am. 2016, Act 294, Eff. Jan. 2, 2017.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.11702 Septage waste licensing; requirement.

Sec. 11702. (1) A person shall not engage in servicing or contract to engage in servicing except as authorized by a septage waste servicing license and a septage waste vehicle license issued by the department pursuant to part 13. A person shall not contract for another person to engage in servicing unless the person who is to perform the servicing has a septage waste servicing license and a septage waste vehicle license.

(2) The septage waste servicing license and septage waste vehicle license requirements provided in this part are not applicable to a publicly owned receiving facility subject to a permit issued under part 31 or section 11511b.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004;—Am. 2005, Act 199, Eff. Nov. 22, 2005.

Popular name: Act 451

Popular name: NREPA

324.11703 Septage waste servicing license; application; eligibility; records.

Sec. 11703. (1) An application for a septage waste servicing license shall include all of the following:

(a) The applicant's name and mailing address.

(b) The location or locations where the business is operated, if the applicant is engaged in the business of servicing.

(c) Written approval from all receiving facilities where the applicant plans to dispose of septage waste.

(d) The locations of the sites where the applicant plans to apply septage waste to land and, for each proposed site, either proof that the applicant owns the proposed site or written approval from the site owner.

(e) A written plan for disposal of septage waste obtained in the winter, if the disposal will be by a method other than delivery to a receiving facility or, subject to section 11711, application to land.

(f) Written proof of satisfaction of the continuing education requirements of subsection (2), if applicable.

(g) Any additional information pertinent to this part required by the department.

(h) Payment of the septage waste servicing license fee as provided in section 11717b.

(2) Beginning January 1, 2007, a person is not eligible for an initial servicing license unless the person has successfully completed not less than 10 hours of continuing education during the 2-year period before applying for the license. Beginning January 1, 2007 and until December 31, 2009, a person is not eligible to renew a servicing license unless the person has successfully completed not less than 10 hours of continuing education during the 2-year period preceding the issuance of the license. Beginning January 1, 2010, a person is not eligible to renew a servicing license unless the person has successfully completed not less than 30 hours of continuing education during the 5-year period preceding the issuance of the license.

(3) Before offering or conducting a course of study represented to meet the educational requirements of subsection (2), a person shall obtain approval from the department. The department may suspend or revoke the approval of a person to offer or conduct a course of study to meet the requirements of subsection (2) for a violation of this part or of the rules promulgated under this part.

(4) If an applicant or licensee is a corporation, partnership, or other legal entity, the applicant or licensee shall designate a responsible agent to fulfill the requirements of subsections (2) and (3). The responsible agent's name shall appear on any license or permit required under this part.

(5) A person engaged in servicing shall maintain at all times at his or her place of business a complete record of the amount of septage waste that the person has transported or disposed of, the location at which septage waste was disposed of, and any complaints received concerning disposal of the septage waste. The person shall also report this information to the department on an annual basis in a manner required by the department.

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(6) A person engaged in servicing shall maintain records required under subsection (5) or 40 CFR part 503 for at least 5 years. A person engaged in servicing or an individual who actually applies septage waste to land, as applicable, shall display these records upon the request of the director, a peace officer, or an official of a certified health department.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11704 Septage waste vehicle license; application; display; transportation of hazardous waste or liquid industrial by-product.

Sec. 11704. (1) An application for a septage waste vehicle license shall include all of the following:

(a) The model and year of the septage waste vehicle.

(b) The capacity of any tank used to remove or transport septage waste.

(c) The name of the insurance carrier for the septage waste vehicle.

(d) Whether the septage waste vehicle or any other vehicle owned by the person applying for the septage waste vehicle license will be used at any time during the license period for land application of septage waste.

(e) Any additional information pertinent to this part required by the department.

(f) A septage waste vehicle license fee as provided by section 11717b for each septage waste vehicle.

(2) A person who is issued a septage waste vehicle license shall carry a copy of that license at all times in each vehicle that is described in the license and display the license upon the request of the department, a peace officer, or an official of a certified health department.

(3) A septage waste vehicle shall not be used to transport hazardous waste regulated under part 111 or liquid industrial by-product regulated under part 121, without the express written permission of the department.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Popular name: Act 451

Popular name: NREPA

324.11705 Septage waste vehicle, tank, and accessory equipment; requirements.

Sec. 11705. A tank upon a septage waste vehicle shall be closed in transit to prevent the release of septage waste and odor. The septage waste vehicle and accessory equipment shall be kept clean and maintained in a manner that prevents environmental damage or harm to the public health.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11706 Review of applications; providing health department with copies of application materials; investigations; issuance of license; license nontransferable; duration of license.

Sec. 11706. (1) Upon receipt of an application for a septage waste servicing license or a septage waste vehicle license, the department shall review the application to ensure that it is complete. If the department determines that the application is incomplete, the department shall promptly notify the applicant of the deficiencies. If the department determines that the application is complete, the department shall promptly provide the appropriate certified health department with a copy of all application materials. Upon receipt of the application materials, a certified health department shall conduct investigations necessary to verify that the sites, the servicing methods, and the septage waste vehicles are in compliance with this part. If so, the department shall approve the application and issue the license applied for in that application. If a certified health department does not exist, the department may perform the functions of a certified health department as necessary.

(2) A septage waste servicing license is not transferable and is valid, unless suspended or revoked, for 5 years. A septage waste vehicle license is not transferable and is valid, unless suspended or revoked, for the same 5-year period as the licensee's septage waste servicing license.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

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324.11707 Display on both sides of septage waste vehicle.

Sec. 11707. Each septage waste vehicle for which a septage waste vehicle license has been issued shall display on both sides of the septage waste vehicle in letters not less than 2 inches high the words "licensed septage hauler", the vehicle license number issued by the department, and a seal furnished by the department that designates the year the septage waste vehicle license was issued.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11708 Disposal of septage waste at receiving facility; fee; order prohibiting operation of wastewater treatment plant.

Sec. 11708. (1) Subject to subsection (2), if a person is engaged in servicing in a receiving facility service area, that person shall dispose of the septage waste at that receiving facility or any other receiving facility within whose service area the person is engaged in servicing.

(2) Subsection (1) does not apply to a person engaged in servicing who owns a storage facility with a capacity of 50,000 gallons or more if the storage facility was constructed, or authorized by the department to be constructed, before the location where the person is engaged in servicing was included in a receiving facility service area under an operating plan approved under section 11715b.

(3) A receiving facility may charge a fee for receiving septage waste. The fee shall not exceed the actual costs of operating the receiving facility including the reasonable cost of doing business as defined by common accounting practices.

(4) The department may issue an order prohibiting the operation of a wastewater treatment plant or structure as a receiving facility because of excessive hydraulic or organic loading, odor problems, or other environmental or public health concerns.

(5) A person shall not dispose of septage waste at a wastewater treatment plant or structure if the operation of that wastewater treatment plant or structure as a receiving facility is prohibited by an order issued under subsection (4) or section 11715b.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004;—Am. 2014, Act 546, Eff. Apr. 16, 2015.

Popular name: Act 451

Popular name: NREPA

324.11709 Disposal of septage waste on land; permit required; additional information; notice; renewal; revocation of permit.

Sec. 11709.

(1) A person shall not dispose of septage waste on land except as authorized by a site permit for that site issued by the department pursuant to part 13. A person shall apply for a site permit using an application form provided by the department. The application shall include all of the following for each site:

(a) A map identifying the site from a county land atlas and plat book.

(b) The site location by latitude and longitude.

(c) The name and address of the land owner.

(d) The name and address of the manager of the land, if different than the owner.

(e) Results of a soil fertility test performed within 1 year before the date of the application for a site permit including analysis of a representative soil sample of each location constituting the site as determined by the bray P1 (bray and kurtz P1), or Mehlich 3 test, for which procedures are described in the publication entitled "Recommended chemical soil test procedures for the north central region". The department shall provide a copy of this publication to any person upon request at no cost. The applicant shall also provide test results from any additional test procedures that were performed on the soil.

(f) Other site specific information necessary to determine whether the septage waste disposal will comply with state and federal law.

(g) Payment of the site permit fee as provided under section 11717b.

(2) Upon receipt of an application under subsection (1), the department shall review the application to ensure that it is complete. If the department determines that the application is incomplete, it shall promptly notify the applicant of the deficiencies.

(3) An applicant for a site permit shall simultaneously send a notice of the application, including all the information required by subsection (1)(a) to (d), to all of the following:

(a) The certified health department having jurisdiction.

(b) The clerk of the city, village, or township where the site is located.

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(c) Each person who owns a lot or parcel that is contiguous to the lot, parcel, or tract on which the proposed site is located or that would be contiguous except for the presence of a highway, road, or street.

(d) Each person who owns a lot or parcel that is within 150 feet of a location where septage waste is to be disposed of by injection or 800 feet of a location where septage waste is to be disposed of by surface application.

(4) If the department finds that the applicant is unable to provide notice as required in subsection (3), the department may waive the notice requirement or allow the applicant to use a substitute means of providing notice.

(5) The department shall issue a site permit if all the requirements of this part and federal law are met. Otherwise, the department shall deny the site permit.

(6) A site permit is not transferable and is valid, unless suspended or revoked, until the expiration of the permittee's septage waste servicing license. A site permit may be revoked by the department if the septage waste land application or site management is in violation of this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11710 Requirements to which permit subject.

Sec. 11710. A site permit is subject to all of the following requirements:

(a) The septage waste disposed of shall be applied uniformly at agronomic rates.

(b) Not more than 1 person licensed under this part may use a site for the disposal of septage waste during any year.

(c) Septage waste may be disposed of by land application only if the horizontal distance from the applied septage waste and the features listed in subparagraphs (*i*) to (*ix*) equals or exceeds the following isolation distances:

		TYPE OF APPLICATION	
		Surface	Injection
(*i*)	Type I public water supply wells	2,000 feet	2,000 feet
(*ii*)	Type IIa public water supply wells	2,000 feet	2,000 feet
(*iii*)	Type IIb public water supply wells	800 feet	800 feet
(*iv*)	Type III public water supply wells	800 feet	150 feet
(*v*)	Private drinking water wells	800 feet	150 feet
(*vi*)	Other water wells	800 feet	150 feet
(*vii*)	Homes or commercial buildings	800 feet	150 feet
(*viii*)	Surface water	500 feet	150 feet
(*ix*)	Roads or property lines	200 feet	150 feet

(d) Septage waste disposed of by land application shall be disposed of either by surface application, subject to subdivision (g), or injection.

(e) If septage waste is applied to the surface of land, the slope of that land shall not exceed 6%. If septage

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waste is injected into land, the slope of that land shall not exceed 12%.

(f) Septage waste shall not be applied to land unless the water table is at least 30 inches below any applied septage waste.

(g) If septage waste is applied to the surface of the land, 1 of the following requirements is met:

(*i*) The septage waste shall be mechanically incorporated within 6 hours after application.

(*ii*) The septage waste shall have been treated to reduce pathogens prior to land disposal by aerobic or anaerobic digestion, lime stabilization, composting, air drying, or other process or method approved by the department and, if applied to fallow land, is mechanically incorporated within 48 hours after application, unless public access to the site is restricted for 12 months and no animals whose products are consumed by humans are allowed to graze on the site for at least 1 month following disposal.

(h) Septage waste shall be treated to reduce pathogens by composting, heat drying or treatment, thermophilic aerobic digestion, or other process or method approved by the department prior to disposal on lands where crops for direct human consumption are grown, if contact between the septage waste and the edible portion of the crop is possible.

(i) Vegetation shall be grown on a septage waste disposal site within 1 year after septage waste is disposed of on that site.

(j) Food establishment septage shall not be applied to land unless it has been combined with other septage waste in no greater than a 1 to 3 ratio and blended into a uniform mixture.

(k) The permittee shall not apply septage waste to a location on the site unless the permittee has conducted a soil fertility test of that location as described in section 11709 within 1 year before the date of the land application. The permittee shall not apply food establishment septage to a location on the site unless the permittee has conducted testing of soil in that location within 1 year before the date of application in accordance with requirements in 40 CFR 257.3 to 257.5 or a single test of mixed septage waste contained in a storage facility.

(*l*) Beginning 2 years after the effective date of the 2004 amendatory act that amended this section, before land application, domestic septage shall be screened through a screen of not greater than 1/2-inch mesh or through slats separated by a gap of not greater than 3/8 inch. Screenings shall be handled as solid waste under part 115. Instead of screening, the domestic septage may be processed through a sewage grinder designed to not pass solids larger than 1/2 inch in diameter.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11711 Surface application of septage waste to frozen ground; requirements.

Sec. 11711. Beginning 2 years after the effective date of the 2004 amendatory act that amended this section, a person shall not surface apply septage waste to frozen ground. Before that time, a person shall not surface apply septage waste to frozen ground unless all of the following requirements are met:

(a) Melting snow or precipitation does not result in the runoff of septage waste from the site.

(b) The slope of the land is less than 2%.

(c) The pH of septage waste is raised to 12.0 (at 25 degrees Celsius) or higher by alkali addition and, without the addition of more alkali, remains at 12.0 or higher for 30 minutes. Other combinations of pH and temperature may be approved by the department.

(d) The septage waste is mechanically incorporated within 20 days following the end of the frozen ground conditions.

(e) The department approves the surface application and subsequent mechanical incorporation.

(f) Less than 10,000 gallons per acre are applied to the surface during the period that the septage waste cannot be mechanically incorporated due to frozen ground.

(g) The septage waste is applied in a manner that prevents the accumulation and ponding of the septage waste.

(h) Any other applicable requirement under this part or federal law is met.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11712 Applicability of federal regulations.

Sec. 11712. Persons subject to this part shall comply with applicable provisions of subparts A, B, and D of part 503 of title 40 of the code of federal regulations.

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History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11713 Inspection of disposal site.

Sec. 11713. (1) At any reasonable time, a representative of the department may enter in or upon any private or public property for the purpose of inspecting and investigating conditions relating to compliance with this part. However, an investigation or inspection under this subsection shall comply with the United States constitution, the state constitution of 1963, and this section.

(2) The department shall inspect septage waste vehicles at least annually.

(3) The department shall inspect a site at least annually.

(4) The department shall inspect a receiving facility within 1 year after that receiving facility begins operation and at least annually thereafter.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11714 Prohibited disposition of septage waste into certain bodies of water.

Sec. 11714. A person shall not dispose of septage waste directly or indirectly in a lake, pond, stream, river, or other body of water.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11715 Preemption; duty of governmental unit to make available public septage waste receiving facility; posting of surety.

Sec. 11715. (1) This part does not preempt an ordinance of a governmental unit that does any of the following:

(a) Prohibits the application of septage waste to land within that governmental unit.

(b) Otherwise imposes stricter requirements than this part. This subdivision applies only if all of the following requirements are met:

(*i*) The receiving facility was operating before the date 2 years after the effective date of the amendatory act that added this subdivision.

(*ii*) The receiving facility's effluent is discharged, either directly or through a sewer system, to a wastewater treatment plant that was operating before the effective date of the amendatory act that added this subdivision.

(*iii*) The receiving facility was constructed, or the receiving facility and a wastewater treatment plant of which the receiving facility is part were improved, at a cost of $6,000,000.00 or more.

(*iv*) There is outstanding indebtedness for the construction or improvement described in subparagraph (*iii*) consisting only of bonds that were also outstanding before the date 2 years after the effective date of the amendatory act that added this subdivision or of loans or bonds that were used to redeem or refund those bonds and that have a maturity or due date not later than 9 years after the maturity date of those bonds.

(2) If a governmental unit requires that all septage waste collected in that governmental unit be disposed of in a receiving facility or prohibits, or effectively prohibits, the application of septage waste to land within that governmental unit, the governmental unit shall make available a receiving facility that meets all of the following requirements:

(a) The receiving facility service area includes the entire governmental unit.

(b) The receiving facility can lawfully accept and has the capacity to accept all septage waste generated within that governmental unit that is not lawfully applied to land.

(c) If the receiving facility is not owned by that governmental unit, the receiving facility is required by contract to accept all septage waste generated within that governmental unit that is not lawfully applied to land.

(3) The owner or operator of a receiving facility may require the posting of a surety, including cash in an escrow account or a performance bond, not exceeding $25,000.00 to dispose of septage waste in the receiving facility.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004;—Am. 2012, Act 41, Imd. Eff. Mar. 6, 2012;—Am. 2014, Act 546, Eff. Apr. 16, 2015.

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Popular name: Act 451

Popular name: NREPA

324.11715b Rules; requirements for receiving facilities and control of nuisance conditions; notice of operation; penalties for noncompliance.

Sec. 11715b. (1) The department shall promulgate rules establishing design and operating requirements for receiving facilities and the control of nuisance conditions.

(2) A person shall not commence construction of a receiving facility on or after the date on which rules are promulgated under subsection (1) unless the owner has a permit from the department authorizing the construction of the receiving facility. The application for a permit shall include a basis of design for the receiving facility, engineering plans for the receiving facility sealed by an engineer licensed to practice in Michigan, and any other information required by the department. If the proposed receiving facility will be part of a sewerage system whose construction is required to be permitted under part 41 or a research, development, and demonstration project whose construction and operation is required to be permitted under section 11511b, the permit issued under part 41 or part 115, respectively, satisfies the permitting requirement of this subsection.

(3) Subject to subsection (4), a person shall not operate a receiving facility contrary to an operating plan approved by the department.

(4) If the operation of a receiving facility commenced before October 12, 2004, subsection (3) applies to that receiving facility beginning October 12, 2005.

(5) Before submitting a proposed operating plan to the department for approval, a person shall do all of the following:

(a) Publish notice of the proposed operating plan in a newspaper of general circulation in the area where the receiving facility is located.

(b) If the person maintains a website, post notice of the proposed operating plan on its website.

(c) Submit notice of the proposed operating plan by first-class mail to the county health department and the legislative body of each city, village, and township located in whole or in part within the service area of the receiving facility.

(6) Notice of a proposed operating plan under subsection (5) shall contain all of the following:

(a) A statement that the receiving facility proposes to receive or, in the case of a receiving facility described in subsection (4), to continue to receive septage waste for treatment.

(b) A copy of the proposed operating plan or a statement where the operating plan is available for review during normal business hours.

(c) A request for written comments on the proposed operation of the receiving facility and the deadline for receipt of such comments, which shall be not less than 30 days after publication, posting, or mailing of the notice.

(7) After the deadline for receipt of comments under subsection (6), the person proposing to operate a receiving facility may modify the plan in response to any comments received and shall submit a summary of the comments and the current version of the proposed operating plan to the department for approval.

(8) The operator of a receiving facility may modify an approved operating plan if the modifications are approved by the department. Subsections (5) to (7) do not apply to the modification of the operating plan.

(9) If the owner or operator of a receiving facility violates this section or rules promulgated under this section, after providing an opportunity for a hearing, the department may order that a receiving facility cease operation as a receiving facility.

(10) The department shall post on its website both of the following:

(a) Approved operating plans, including any modifications under subsection (8).

(b) Notice of any orders under subsection (9).

(11) If construction of a receiving facility commenced before the date on which rules are promulgated under subsection (1), all of the following apply:

(a) Within 1 year after the date on which rules are promulgated under subsection (1), the owner of the receiving facility shall submit to the department and obtain department approval of a report prepared by a professional engineer licensed to practice in Michigan describing the receiving facility's state of compliance with the rules and proposing any modifications to the receiving facility necessary to comply with the rules.

(b) If, according to the report approved under subdivision (a), modifications to the receiving facility are necessary to comply with the rules promulgated under subsection (1), within 18 months after the report is approved under subdivision (a), the owner of the receiving facility shall submit to the department engineering plans for modifying the receiving facility and shall obtain a construction permit from the department for modifying the receiving facility.

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(c) Within 3 years after the report is approved under subdivision (a), the owner of the receiving facility shall complete construction modifying the receiving facility so that it complies with those rules.

(12) After a hearing, the department may order that a receiving facility whose owner fails to comply with this section cease operating as a receiving facility.

History: Add. 2004, Act 381, Imd. Eff. Oct. 12, 2004;—Am. 2005, Act 199, Eff. Nov. 22, 2005.

Popular name: Act 451

Popular name: NREPA

324.11715d Advisory committee to make recommendations on septage waste storage facility management practices.

Sec. 11715d. (1) Within 60 days after the effective date of the amendatory act that added this section, the department shall convene an advisory committee to make recommendations on septage waste storage facility management practices, including, but not limited to, storage facility inspections. The advisory committee shall include at least all of the following:

(a) A storage facility operator.

(b) A receiving facility operator.

(c) A generator of septage waste.

(d) A representative of township government.

(e) A representative of an environmental protection organization.

(f) A licensed Michigan septage waste hauler.

(2) Within 18 months after the effective date of this section, the department shall establish generally accepted septage storage facility management practices and post the management practices on the department's website.

(3) A person shall not construct a septage waste storage facility without written approval from the department.

History: Add. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Compiler's note: For abolishment of the advisory committee on septage waste storage facility management practices and transfer of its powers and duties to the department of environmental quality, see E.R.O. No. 2007-20, compiled at MCL 324.99912.

Popular name: Act 451

Popular name: NREPA

324.11716 Certification of city, county, and district departments of health to carry out powers and duties.

Sec. 11716. (1) The department may certify a city, county, or district health department to carry out certain powers and duties of the department under this part.

(2) If a certified health department does not exist in a city, county, or district or does not fulfill its responsibilities under this part, the department may contract with qualified third parties to carry out certain responsibilities of the department under this part in that city, county, or district.

(3) The department and each certified health department or third party that will carry out powers or duties of the department under this part shall enter a memorandum of understanding or contract describing those powers and duties and providing for compensation to be paid by the department from the fund to the certified health department or third party.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11717 Septage waste site contingency fund; creation; authorization of expenditures.

Sec. 11717. (1) There is created in the state treasury a septage waste site contingency fund. Interest earned by the septage waste contingency fund shall remain in the septage waste contingency fund unless expended as provided in subsection (2).

(2) The department shall expend money from the septage waste contingency fund, upon appropriation, only to defray costs of the continuing education courses under section 11703 that would otherwise be paid by persons taking the courses.

(3) The septage waste program fund is created within the state treasury.

(4) Fees and interest on fees collected under this part shall be deposited in the fund. In addition, promptly after the effective date of the 2004 amendatory act that amended this section, the state treasurer shall transfer to the septage waste program fund all the money in the septage waste compliance fund. The state treasurer

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may receive money or other assets from any other source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(5) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(6) The department shall expend money from the fund, upon appropriation, only for the enforcement and administration of this part, including, but not limited to, compensation to certified health departments or third parties carrying out certain powers and duties of the department under section 11716.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11717b Fees for persons engaged in septage waste servicing.

Sec. 11717b. (1) The cost of administering this part shall be recovered by collecting fees from persons engaged in servicing. Fee categories and, subject to subsection (2), rates are as follows:

(a) The fee for a septage waste servicing license is $200.00 per year.

(b) The fee for a septage waste vehicle license is as follows:

(*i*) If none of the vehicles owned by the person applying for the septage waste vehicle license will be used at any time during the license period for disposal of septage waste by land application, $350.00 per year for each septage waste vehicle.

(*ii*) If any of the vehicles owned by the person applying for the septage waste vehicle license will be used at any time during the license period for disposal of septage waste by land application, $480.00 per year for each septage waste vehicle.

(c) The fee to replace an existing septage waste vehicle under a septage waste vehicle license with a different septage waste vehicle under the same ownership, if the annual fee for that year has been paid under subdivision (b), is as follows:

(*i*) $200.00 if the septage waste vehicle being replaced has been inspected for that year under section 11706.

(*ii*) $150.00 if the vehicle being replaced has not been inspected for that year.

(d) The fee for a site permit is $500.00. However, a person shall not be charged a fee to renew a site permit.

(2) If a fee under subsection (1) is paid for a license, permit, or approval but the application for the license or permit or the request for the approval is denied, the department shall promptly refund the fee.

(3) For each state fiscal year, a person possessing a septage waste servicing license and septage waste vehicle license as of January 1 of that fiscal year shall be assessed a septage waste servicing license fee and septage waste vehicle license fee as specified in this section. The department shall notify those persons of their fee assessments by February 1 of that fiscal year. Payment shall be postmarked by March 15 of that fiscal year.

(4) The department shall assess interest on all fee payments received after the due date. The amount of interest shall equal 0.75% of the payment due, for each month or portion of a month the payment remains past due. The failure by a person to timely pay a fee imposed by this section is a violation of this part.

(5) If a person fails to pay a fee required under this section in full, plus any interest accrued, by October 1 of the year following the date of notification of the fee assessment, the department may issue an order that revokes the license or permit held by that person for which the fee was to be paid.

(6) Fees and interest collected under this section shall be deposited in the fund.

History: Add. 2004, Act 381, Imd. Eff. Oct. 12, 2004;—Am. 2008, Act 492, Imd. Eff. Jan. 13, 2009.

Popular name: Act 451

Popular name: NREPA

324.11718 Rules.

Sec. 11718. (1) The department shall promulgate rules that establish both of the following:

(a) Continuing education requirements under section 11706.

(b) Design and operating requirements for receiving facilities, as provided in section 11715b.

(2) The department may, in addition, promulgate rules that do 1 or more of the following:

(a) Add other materials and substances to the definition of septage waste.

(b) Add enclosures to the list of enclosures in the definition of septage waste under section 11701 the servicing of which requires a septage waste servicing license under this part.

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(c) Specify information required on an application for a septage waste servicing license, septage waste vehicle license, or site permit.

(d) Establish standards or procedures for a department declaration under section 11708 that a wastewater treatment plant or structure is unavailable as a receiving facility because of excessive hydraulic or organic loading, odor problems, or other factors.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11719 Violation or false statement as misdemeanor; penalties.

Sec. 11719. (1) A person who violates section 11704, 11705, 11708, 11709, 11710, or 11711 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. A peace officer may issue an appearance ticket to a person for a violation of any of these sections.

(2) A person who knowingly makes or causes to be made a false statement or entry in a license application or a record required in section 11703 is guilty of a felony punishable by imprisonment for not more than 2 years, or a fine of not less than $2,500.00 or more than $25,000.00, or both.

(3) A person who violates this part or a license or permit issued under this part, except as provided in subsections (1) and (2), is guilty of a misdemeanor punishable by imprisonment for not more than 30 days or a fine of not less than $1,000.00 and not more than $2,500.00, or both.

(4) Each day that a violation described in subsection (1), (2), or (3) continues constitutes a separate violation.

(5) Upon receipt of information that the servicing of septage waste regulated by this part presents an imminent or substantial threat to the public health, safety, welfare, or the environment, after consultation with the director or a designated representative of the department of community health, the department, or a peace officer if authorized by law, shall do 1 or more of the following:

(a) Pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, summarily suspend a license issued under this part and afford the holder of the license an opportunity for a hearing within 7 days.

(b) Request that the attorney general commence an action to enjoin the act or practice and obtain injunctive relief upon a showing that a person is or has removed, transported, or disposed of septage waste in a manner that is or may become injurious to the public health, safety, welfare, or the environment.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11720 Temporary variance from act.

Sec. 11720. (1) The director may grant a temporary variance from a requirement of this part added by the 2004 amendatory act that amended this part if all of the following requirements are met:

(a) The variance is requested in writing.

(b) The requirements of this part cannot otherwise be met.

(c) The variance will not create or increase the potential for a health hazard, nuisance condition, or pollution of surface water or groundwater.

(d) The activity or condition for which the variance is proposed will not violate any other part of this act.

(2) A variance granted under subsection (1) shall be in writing and shall be posted on the department's website.

History: Add. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

PART 119
WASTE MANAGEMENT AND RESOURCE RECOVERY FINANCE

324.11901 Definitions.

Sec. 11901. As used in this part:

(a) “Costs” means 1 or more of the following costs that may be chargeable to the waste management project as a capital cost under generally acceptable accounting principles:

(*i*) The cost or fair market value of the acquisition or construction of lands, property rights, utility extensions, disposal facilities, buildings, structures, fixtures, machinery, equipment, access roads, easements,

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and franchises.

(*ii*) Engineering, architectural, accounting, legal, organizational, marketing, financial, and other services.

(*iii*) Permits and licenses.

(*iv*) Interest on the financing of the waste management project during acquisition and construction and before the date of commencement of commercial operation of the waste management project, but for not more than 1 year after that date.

(*v*) Operating expenses of the waste management project before full earnings are achieved, but for not more than 1 year after that date.

(*vi*) A reasonable reserve for payment of principal and interest on an indebtedness to finance the cost of a waste management project.

(b) "Local authority" means an authority created under Act No. 179 of the Public Acts of 1947, being sections 123.301 to 123.310 of the Michigan Compiled Laws.

(c) "Municipality" means a county, city, township, village, or local authority, or a combination thereof.

(d) "Note" means a note issued by a municipality pursuant to this part.

(e) "Person" means an individual, firm, partnership, association, corporation, unincorporated joint venture, or trust, organized, permitted, or existing under the laws of this state or any other state, including a federal corporation, or a combination thereof, but excluding a municipality, special district having taxing powers, or other political subdivision of this state.

(f) "Revenue" means money or income received by a municipality as a result of activities authorized by this part, including loan repayments and interest on loan repayments; proceeds from the sale of real or personal property; interest payments on investments; rentals and other payments due and owing on account of an instrument, lease, contract, or agreement to which the municipality is a party; and gifts, grants, bestowals, or other moneys or payments to which a municipality is entitled under this part or other law.

(g) "Waste" means a discarded solid or semisolid material, including garbage, refuse, rubbish, ashes, liquid material, and other discarded materials generated by residential, commercial, agricultural, municipal, or industrial activities, including waste from sewage collected and treated in a municipal sewage system.

(h) "Waste management project" means 1 or more parts of a waste collection, transportation, disposal, or resource recovery system, including plants, works, systems, facility or transfer stations planned, designed, or financed under this part. Waste management project includes the extension or provision of utilities, steam generating and conveyance facilities, appurtenant machinery, equipment, and other capital facilities, other than off-site mobile vehicular equipment, if necessary for the operation of a project or portion of a project. Waste management project also includes necessary property rights, easements, interests, permits, and licenses.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.11902 Powers of municipality generally.

Sec. 11902. A municipality may do any of the following:

(a) Acquire by gift, purchase, or lease, construct, improve, remodel, repair, maintain, and operate, individually or jointly with a municipality or person, a waste management project; acquire private or public property by purchase, lease, gift, or exchange; and acquire private property when necessary by condemnation for public purposes pursuant to Act No. 149 of the Public Acts of 1911, being sections 213.21 to 213.25 of the Michigan Compiled Laws, or other applicable law or charter.

(b) Impose rates, charges, and fees, and enter into contracts relative to the rates, charges, and fees with persons using a waste management project; and assign, convey, encumber, mortgage, pledge, or grant a security interest in the rates, charges, and fees or the right to impose rates, charges, and fees to a person or municipality for the purpose of securing a contract with a person or municipality or for the purpose of providing security or a source of payment for an indebtedness of a person or municipality, including bonds or notes, issued pursuant to the following acts, to finance the cost of a waste management project or in anticipation of revenues from a waste management project:

(*i*) The industrial development revenue bond act of 1963, Act No. 62 of the Public Acts of 1963, being sections 125.1251 to 125.1267 of the Michigan Compiled Laws.

(*ii*) The economic development corporation act, Act No. 338 of the Public Acts of 1974, being sections 125.1601 to 125.1636 of the Michigan Compiled Laws.

(*iii*) The Derezinski-Geerlings job development authority act, Act No. 301 of the Public Acts of 1975, being sections 125.1701 to 125.1770 of the Michigan Compiled Laws.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

324.11903 Contracts for acquisition, construction, financing, and operation of waste management project or for use of services of project; bids or proposals; negotiations; validity of contracts; pledge of full faith and credit; methods of paying pledged share of costs.

Sec. 11903. (1) A municipality may enter into a contract with a person or municipality, providing for the acquisition, construction, financing, and operation of a waste management project or for the use of the services of a project. Notwithstanding the requirements of its municipal charter or ordinances, the municipality, following the receipt from persons of bids or proposals for a contract referred to in this section, may negotiate with 1 or more persons who have submitted the bids or proposals, permit those persons to modify their bids or proposals, and enter into a contract with 1 or more of those persons on the basis of a bid or proposal as modified. A contract executed pursuant to this section, regardless of whether the bidding on the contract occurred before July 12, 1978, shall be valid and binding on the parties. The municipality is authorized, but is not required, to pledge its full faith and credit for the payment of the obligation in the manner and times specified in the contract.

(2) To pay its pledged share of the costs of a waste management project or to secure its contract for the use of project services, a contracting municipality may use or pledge 1 or more, or a combination, of the following methods of raising necessary funds:

(a) If the full faith and credit of the municipality is pledged, the levy of a tax on taxable property by a municipality having the power to tax, which tax may be imposed without limitation as to rate or amount and may be imposed in addition to other taxes that the municipality is authorized to levy, but for not more than a rate or amount that is sufficient to pay its share or secure its contract.

(b) The levy and collection of rates or charges to users and beneficiaries of the service furnished by the waste management project.

(c) From money received or to be received from the imposition of taxes by the state and returned to the municipality, unless the use of the money for that purpose is expressly prohibited by the state constitution of 1963.

(d) From any other funds which may be validly used for that purpose.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.11904 Additional powers of municipality.

Sec. 11904. A municipality may do any of the following:

(a) Include in a contract with a municipality or person provisions to the effect that the municipality will require all residential waste subject to its jurisdiction and police power under applicable law or charter and collected within its limits, whether by a municipality or person operating under contract with the municipality, to be disposed of at the waste management project. If so included, the municipality shall enact legislation with appropriate penalties to make the requirement effective. However, a township, by resolution, may disapprove the collection of waste within the township boundaries by a county.

(b) Provide by contract with a municipality or person for the ownership of a waste management project after all indebtedness with respect to the project has been retired.

(c) Provide that rates or charges to users and beneficiaries of the service furnished by the waste management project shall be a lien on the premises for which the services have been provided, and that amounts delinquent for 3 months or more may be certified annually to the proper tax assessing officer or agency of the municipality, to be entered upon the next tax roll against the premises to which the services have been rendered. The charges shall be collected and the lien enforced in the same manner as provided for the collection of taxes assessed upon the tax roll and the enforcement of a lien for unpaid taxes. The time and manner of certification and other details in respect to the collection of the rates and charges and the enforcement of the lien shall be prescribed by the governing body of the municipality. The municipality may authorize a person or municipality to impose, levy, and collect rates or charges against users and beneficiaries of the service furnished by the waste management project. The municipality may agree with a municipality or person that the rates and charges shall be a lien on the premises serviced, and may further agree that the collection of the rates and charges imposed may be collected and the lien enforced in the same manner as provided in this subsection for the collection of rates and charges and the enforcement of a lien by the municipality.

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History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.11905 Contracts; provisions; remedies in case of default.

Sec. 11905. A contract by a municipality with a person or municipality may provide for any and all matters relating to the acquisition, construction, financing, and operation of the waste management project as are considered necessary. The contract may provide for appropriate remedies in case of default, including the right of the contracting municipality to authorize the state treasurer or other official charged with the disbursement of unrestricted state funds returnable to the municipality under the state constitution of 1963 or other laws of this state to withhold and apply sufficient funds from those disbursements to make up a default or deficiency.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.11906 Resolution authorizing execution of contract; publication and contents of notice of adoption; effective date of contract; referendum; special election not included in statutory or charter limitation; verification of signatures on petition; rejection of signatures; determining number of registered electors.

Sec. 11906. (1) A municipality desiring to enter into a contract under section 11902 or 11903 shall authorize, by resolution of its governing body, the execution of the contract. After the adoption of the resolution, if the full faith and credit of the municipality is pledged, a notice of the adoption of the resolution shall be published in a newspaper of general circulation in the municipality. The notice shall state all of the following:

(a) That the governing body has adopted a resolution authorizing execution of the contract.

(b) The purpose and the expected cost of the contract to the municipality.

(c) The source of payment for the municipality's contractual obligation.

(d) The right of referendum on the contract.

(e) Other information the governing body determines to be necessary to adequately inform interested electors of the nature of the obligation.

(2) A contract pledging the full faith and credit may be executed and delivered by the municipality upon approval of its governing body without a vote of the electors on the contract, but the contract shall not become effective until the expiration of 45 days after the date of publication of the notice required by subsection (1). If, within the 45-day period, a petition requesting a referendum upon the contract, signed by not less than 5% or 15,000 of the registered electors residing within the limits of the municipality, whichever is less, is filed with the clerk of the municipality, the contract shall not become effective until approved by the vote of a majority of the electors of the municipality qualified to vote and voting at a general or special election.

(3) A special election called for pursuant to subsection (2) shall not be included in statutory or charter limitation as to the number of special elections to be called within a specified period of time. Signatures on the petition shall be verified by an elector under oath as the actual signatures of the electors whose names appear on the petition, and the clerk of the municipality shall have the same power to reject signatures as city clerks under section 25 of the home rule city act, Act No. 279 of the Public Acts of 1909, being section 117.25 of the Michigan Compiled Laws. The number of registered electors in a municipality shall be determined from the municipality's registration books.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.11907 Exercise of powers conferred on municipality.

Sec. 11907. A municipality may exercise the powers conferred by this part regardless of the requirements, including the competitive bidding requirement, of its municipal charter.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.11908 Provisions inapplicable to certain municipalities.

Sec. 11908. This part shall not apply to municipalities having a population of more than 2,000,000.

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History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 121
LIQUID INDUSTRIAL BY-PRODUCTS

324.12101 Definitions; B to L.

Sec. 12101. As used in this part:

(a) "Biofuel" means any renewable liquid or gas fuel offered for sale as a fuel that is derived from recently living organisms or their metabolic by-products and meets applicable quality standards, including, but not limited to, ethanol, ethanol-blended fuel, biodiesel, and biodiesel blends.

(b) "Biogas" means a biofuel that is a gas.

(c) "Brine" means a liquid produced as a by-product of oil or natural gas production or exploration.

(d) "Container" means any portable device in which a liquid industrial by-product is stored, transported, treated, or otherwise handled.

(e) "Department" means the department of environmental quality.

(f) "Designated facility" means a treatment facility, storage facility, disposal facility, or reclamation facility that receives liquid industrial by-product from off-site.

(g) "Director" means the director of the department.

(h) "Discarded" means any of the following:

(*i*) Abandoned by being disposed of, burned, or incinerated; or accumulated, stored, or treated before, or instead of, being abandoned.

(*ii*) Accumulated, stored, or treated before being managed in 1 of the following ways:

(A) By being used or reused in a manner constituting disposal by being applied to or placed on land or by being used to produce products that are applied to or placed on land.

(B) By being burned to recover energy or used to produce a fuel.

(C) By reclamation.

(i) "Discharge" means the accidental or intentional spilling, leaking, pumping, releasing, pouring, emitting, emptying, or dumping of liquid industrial by-product into the land, air, or water.

(j) "Disposal" means the abandonment, discharge, deposit, injection, dumping, spilling, leaking, or placing of a liquid industrial by-product into or on land or water in such a manner that the liquid industrial by-product may enter the environment, or be emitted into the air, or discharged into surface water or groundwater.

(k) "Disposal facility" means a facility or a part of a facility at which liquid industrial by-product is disposed.

(*l*) "Facility" means all contiguous land and structures, other appurtenances, and improvements on land for treating, storing, disposing of, or reclamation of liquid industrial by-product.

(m) "Generator" means a person whose act or process produces liquid industrial by-product.

(n) "Liquid industrial by-product" or "by-product" means any material that is produced by, is incident to, or results from industrial, commercial, or governmental activity or any other activity or enterprise, that is determined to be liquid by method 9095 (paint filter liquids test) as described in "Test methods for evaluating solid wastes, physical/chemical methods," United States Environmental Protection Agency publication no. SW-846, and that is discarded. Liquid industrial by-product does not include any of the following:

(*i*) Hazardous waste regulated and required to be manifested under part 111.

(*ii*) Septage waste regulated under part 117.

(*iii*) Medical waste regulated under part 138 of the public health code, 1978 PA 368, MCL 333.13801 to 333.13832.

(*iv*) A discharge to the waters of the state in accordance with a permit, order, or rule under part 31.

(*v*) A liquid generated by a household.

(*vi*) A liquid regulated under 1982 PA 239, MCL 287.651 to 287.683.

(*vii*) Material managed in accordance with section 12102a.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2008, Act 8, Imd. Eff. Feb. 20, 2008;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99903 of the Michigan Compiled Laws.

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Popular name: NREPA

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324.12102 Definitions; O to V.

Sec. 12102. As used in this part:

(a) "On-site" means on the same geographically contiguous property, which may be divided by a public or private right-of-way if access is by crossing rather than going along the right-of-way. On-site includes noncontiguous pieces of property owned by the same person but connected by a right-of-way that the owner controls and to which the public does not have access.

(b) "Peace officer" means any law enforcement officer who is trained and licensed or certified under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615, or an officer appointed by the director of the department of state police under section 6d of 1935 PA 59, MCL 28.6d.

(c) "Publicly owned treatment works" means any entity that treats municipal sewage or industrial waste or liquid industrial by-product that is owned by the state or a municipality, as that term is defined in 33 USC 1362. Publicly owned treatment works include sewers, pipes, or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

(d) "Reclamation" means either processing to recover a usable product or regeneration.

(e) "Reclamation facility" means a facility or part of a facility where liquid industrial by-product reclamation is conducted.

(f) "Shipping document" means a log, an invoice, a bill of lading, or other record, in either written or electronic form, that includes all of the following information:

(*i*) The name and address of the generator.

(*ii*) The name of the transporter.

(*iii*) The type and volume of liquid industrial by-product in the shipment.

(*iv*) The date the by-product was shipped off-site from the generator.

(*v*) The name, address, and site identification number of the designated facility.

(g) "Site identification number" means a number that is assigned by the United States Environmental Protection Agency or the department to a transporter or facility.

(h) "Storage" means the containment of liquid industrial by-product, on a temporary basis, in a manner that does not constitute disposal of the by-product.

(i) "Storage facility" means a facility or part of a facility where liquid industrial by-product is stored.

(j) "Surface impoundment" means a treatment facility, storage facility, or disposal facility or part of a treatment, storage, or disposal facility that is either a natural topographic depression, a human-made excavation, or a diked area formed primarily of earthen materials. A surface impoundment may be lined with human-made materials designed to hold an accumulation of liquid industrial by-product. Surface impoundments include, but are not limited to, holding, storage, settling, and aeration pits, ponds, and lagoons. Surface impoundment does not include an injection well.

(k) "Tank" means a stationary device designed to contain an accumulation of liquid industrial by-product that is constructed primarily of nonearthen materials such as wood, concrete, steel, or plastic to provide structural support.

(*l*) "Transportation" means the movement of liquid industrial by-product by air, rail, public or private roadway, or water.

(m) "Transporter" means a person engaged in the off-site transportation of liquid industrial by-product by air, rail, public roadway, or water.

(n) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any liquid industrial by-product, to neutralize the by-product, or to render the by-product safer to transport, store, or dispose of, amenable to recovery, amenable to storage, or reduced in volume.

(o) "Treatment facility" means a facility or part of a facility at which liquid industrial by-product undergoes treatment.

(p) "Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and that, as a result of the use, is contaminated by physical or chemical impurities.

(q) "Vehicle" means a transport vehicle as defined by 49 CFR 171.8.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2008, Act 8, Imd. Eff. Feb. 20, 2008;—Am. 2015, Act 224, Eff. Mar. 16, 2016;—Am. 2016, Act 294, Eff. Jan. 2, 2017.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99903 of the Michigan Compiled Laws.

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324.12102a Materials not specified as liquid industrial by-products.

Sec. 12102a. The following materials are not liquid industrial by-products when managed as specified:

(a) A material that is used or reused as an effective substitute for commercial products, used or reused as an ingredient to make a product, or returned to the original process, if the material does not require reclamation prior to use or reuse, is not directly burned to recover energy or used to produce a fuel, and is not applied to the land or used in products applied to the land.

(b) A used oil that is directly burned to recover energy or used to produce a fuel if all of the following requirements are met:

(*i*) The material meets the used oil specifications of R 299.9809(1)(f) of the Michigan administrative code.

(*ii*) The material contains no greater than 2 ppm polychlorinated biphenyls.

(*iii*) The material has a minimum energy content of 17,000 BTU/lb.

(*iv*) The material is expressly authorized as a used oil fuel source, regulated under part 55, or, in another state, regulated under a similar air pollution control authority.

(c) A liquid fully contained inside a manufactured article, until the liquid is removed or the manufactured equipment is discarded, at which point it becomes subject to this part.

(d) A liquid by-product sample transported for testing to determine its characteristics or composition. The sample becomes subject to this part when discarded.

(e) A liquid that is not regulated under part 615 that is generated in the drilling, operation, maintenance, or closure of a well, or other drilling operation, including the installation of cathodic protection or directional drilling, if either of the following applies:

(*i*) The liquid is left in place at the point of generation in compliance with part 31, 201, or 213.

(*ii*) The liquid is transported off-site from a location that is not a known facility as defined in section 20101, and all of the following occur:

(A) The disposal complies with applicable provisions of part 31 or 115.

(B) The disposal is not to a surface water.

(C) The landowner of the disposal site has authorized the disposal.

(f) A liquid vegetable or animal fat oil that is transported directly to a producer of biofuels for the purpose of converting the oil to biofuel.

(g) An off-specification fuel, including a gasoline blendstock, that was generated in a pipeline as the interface material from the mixture of 2 adjacent fuel products and that will be processed, by blending or by distillation or other refining, to produce a fuel product or fuel products.

(h) An off-specification fuel, including a gasoline blendstock, that resulted from the commingling of off-specification fuel products or from phase separation in a gasoline and alcohol blend and that will be processed, by distillation or other refining, to produce fuel products.

(i) An off-specification fuel product transported directly to a distillation or refining facility to produce a fuel product or fuel products regulated pursuant to 40 CFR part 80.

(j) A liquid or a sludge and associated liquid authorized to be applied to land under part 31 or 115.

(k) A liquid residue remaining in a container after pouring, pumping, aspirating, or another practice commonly employed to remove liquids has been utilized, if not more than 1 inch of residue remains on the bottom, or, for containers less than or equal to 110 gallons in size, not more than 3% by weight of residue remains in the container, or, for containers greater than 110 gallons in size, not more than 0.3% by weight of residue remains in the container. The liquid residue becomes subject to this part when discarded.

(*l*) A residual amount of liquid remaining in a container and generated as a result of transportation of a solid waste in that container.

(m) A liquid brine authorized for use as dust and ice control regulated under parts 31 and 615.

(n) Food processing residuals as defined in section 11503, or site-separated material or source-separated material approved by the department under part 115, that, to produce biogas, will be decomposed in a controlled manner under anaerobic conditions using a closed system that complies with part 55.

(o) A liquid approved by the director for use as a biofuel in energy production in compliance with part 55 that is not speculatively accumulated and that is transported directly to the burner of the biofuel.

History: Add. 2008, Act 8, Imd. Eff. Feb. 20, 2008;—Am. 2008, Act 153, Imd. Eff. June 5, 2008;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

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Popular name: NREPA

324.12103 Generator; duties.

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Sec. 12103. (1) A generator shall do all of the following:

(a) Characterize the liquid industrial by-product in accordance with this act and maintain records of the characterization.

(b) Maintain labeling or marking on containers and tanks of liquid industrial by-product to identify their contents.

(c) If transporting liquid industrial by-product, other than the generator's own by-product, by public roadway, engage, employ, or contract for the transportation only with a transporter registered and permitted under the hazardous materials transportation act, 1998 PA 138, MCL 29.471 to 29.480.

(d) Except as otherwise provided in this part, utilize and retain a separate shipping document for each shipment of liquid industrial by-product transported to a designated facility. The department may authorize the use of a consolidated shipping document for a single shipment of uniform types of by-product collected from multiple by-product pickups. If a consolidated shipping document is authorized by the department and utilized by a generator, a receipt shall be obtained from the transporter documenting the transporter's company name, the driver's signature, the date of pickup, the type and quantity of by-product accepted from the generator, the consolidated shipping document number, and the designated facility. A generator of brine may complete a single shipping document per transporter of brine, per disposal well, each month.

(e) Certify that, when the transporter picks up liquid industrial by-product, the liquid industrial by-product is fully and accurately described on the shipping document and in proper condition for transport and that the information contained on the shipping document is factual. This certification shall be by the generator or the generator's authorized representative.

(f) Provide to the transporter a copy of the shipping document to accompany the liquid industrial by-product to the designated facility.

(g) If the generator does not receive confirmation of acceptance of the liquid industrial by-product by the designated facility, attempt to obtain confirmation by contacting the designated facility and the transporter. If resolution cannot be achieved after contacting the designated facility and transporter, the generator shall notify the department.

(2) A generator that transports its own liquid industrial by-product or operates an on-site reclamation facility, treatment facility, or disposal facility shall keep records of all by-product produced and transported, reclaimed, treated, or disposed of at the facility.

(3) A generator shall retain all records required pursuant to this part for a period of at least 3 years, and shall make those records readily available for review and inspection by the department or a peace officer. The retention period required by this subsection is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as otherwise required by the department. Records required under this part may be retained in electronic format.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007;—Am. 2008, Act 8, Imd. Eff. Feb. 20, 2008;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2013, Act 73, Eff. Oct. 1, 2013;—Am. 2014, Act 286, Imd. Eff. Sept. 23, 2014;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99903 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.12104 Repealed. 1998, Act 140, Eff. Sept. 1, 1998.

Compiler's note: The repealed section pertained to licensing requirements for transportation of liquid industrial wastes.

Popular name: Act 451

Popular name: NREPA

324.12105 Registered and permitted transporter; requirements.

Sec. 12105. A transporter is subject to the registration and permitting requirements of the hazardous materials transportation act, 1998 PA 138, MCL 29.471 to 29.480. A transporter registered and permitted under that act and licensed under part 117 shall comply with all of the following:

(a) All registration and permitting requirements of the hazardous materials transportation act, 1998 PA 138, MCL 29.471 to 29.480, and licensing requirements of this part and part 117.

(b) Septage waste or liquid industrial by-product transported in a vehicle managed under part 117 and this part shall not be disposed of on land, unless specifically authorized by the department.

(c) Unless, under subdivision (b), the department specifically authorizes land application, in addition to the requirements of this part and part 117, the words "Land Application Prohibited", in a minimum of 2-inch

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letters, shall be affixed in a conspicuous location and visible on both sides of the vehicle if both of the following apply:

(*i*) The vehicle is licensed under part 117 to transport septage waste.

(*ii*) The vehicle is authorized under the hazardous materials transportation act, 1998 PA 138, MCL 29.471 to 29.480, to transport liquid industrial by-product.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998;—Am. 2008, Act 8, Imd. Eff. Feb. 20, 2008;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Popular name: Act 451

Popular name: NREPA

324.12106 Equipment, location, and methods of transporter; inspection by department.

Sec. 12106. The department may conduct an inspection to verify that the equipment, location, and methods of a transporter are adequate to effectuate service under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.12107 Vehicles; copy of registration and permit to be carried; closing or covering of vehicles; cleaning and decontamination; applicability of subsection (3) to vehicle transporting brine.

Sec. 12107. (1) A vehicle used to transport liquid industrial by-product by public roadway shall carry a copy of the registration and permit issued in accordance with the hazardous materials transportation act, 1998 PA 138, MCL 29.471 to 29.480, and shall produce it upon request of the department or a peace officer. The registration and permit may be carried in electronic format.

(2) All vehicles and containers used to transport liquid industrial by-product shall be closed or covered to prevent the escape of by-product. The outside of all vehicles, containers, and accessory equipment shall be kept free of by-product and its residue.

(3) To avoid cross-contamination, all portions of a vehicle or equipment that have been in contact with liquid industrial by-product shall be cleaned and decontaminated before the transport of any products, incompatible by-product, hazardous waste regulated under part 111, or other material. Before the transport of by-product, all portions of a vehicle or equipment shall be cleaned and decontaminated, as necessary, of any hazardous waste regulated under part 111. A transporter who owns or legally controls a vehicle or equipment shall maintain as part of the transporter's records documentation that before its use for the transportation of any products, incompatible by-product, hazardous waste regulated under part 111, or other material, the vehicle or equipment was decontaminated. This subsection does not apply to a vehicle if brine was transported in the vehicle and the next load transported in the vehicle is brine for disposal or well drilling or production purposes, oil or other hydrocarbons produced from an oil or gas well, or water or other fluids to be used in activities regulated under part 615 or the rules, orders, or instructions under that part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998;—Am. 2008, Act 8, Imd. Eff. Feb. 20, 2008;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Popular name: Act 451

Popular name: NREPA

324.12108 Repealed. 1998, Act 140, Eff. Sept. 1, 1998.

Compiler's note: The repealed section pertained to denial, revocation, or suspension of license.

Popular name: Act 451

Popular name: NREPA

324.12109 Liquid industrial by-product transporter; delivery; retention of records; use of consolidated shipping document; issuance of site identification number.

Sec. 12109. (1) A liquid industrial by-product transporter shall provide the generator confirmation of acceptance of by-product for transportation and shall deliver the liquid industrial by-product only to the designated facility specified by the generator.

(2) The liquid industrial by-product transporter shall retain all records required under this part for a period of at least 3 years, and shall make those records readily available for review and inspection by the department or a peace officer. The retention period required in this subsection is automatically extended during the course of any unresolved enforcement action regarding an activity regulated under this part or as required by the department. Records required under this part may be retained in electronic format.

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(3) The department may authorize, for certain liquid industrial by-product streams, the use of a consolidated shipping document as authorized under section 12103(1)(d). If a consolidated shipping document is authorized by the department and utilized by a generator, the transporter shall give to the generator a receipt documenting the transporter's company name, the driver's signature, the date of pickup, the type and quantity of by-product removed, the consolidated shipping document number, and the designated facility.

(4) A transporter shall obtain a site identification number assigned by the United States Environmental Protection Agency or the department. Until October 1, 2017, the department shall assess a site identification number user charge of $50.00 for each site identification number it issues. The department shall not issue a site identification number under this subsection unless the site identification number user charge and the tax identification number for the person applying for the site identification number have been received. Money collected under this subsection shall be forwarded to the state treasurer for deposit into the environmental pollution prevention fund created in section 11130.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2013, Act 73, Eff. Oct. 1, 2013;—Am. 2014, Act 286, Imd. Eff. Sept. 23, 2014;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Popular name: Act 451

Popular name: NREPA

324.12110 Repealed. 1998, Act 140, Eff. Sept. 1, 1998.

Compiler's note: The repealed section pertained to proof of financial responsibility.

Popular name: Act 451

Popular name: NREPA

324.12111 Incidents threatening public health, safety, and welfare, or environment; duties of generator, transporter, or owner or operator of facility; exemptions.

Sec. 12111. (1) If a fire, explosion, or discharge of liquid industrial by-product occurs that could threaten the public health, safety, and welfare, or the environment, or when a generator, transporter, or owner or operator of a designated facility first has knowledge that a spill of by-product has reached surface water or groundwater, the generator, transporter, or owner or operator of the designated facility shall take appropriate immediate action to protect the public health, safety, and welfare, and the environment, including notification of local authorities and the pollution emergency alerting system using the telephone number 800-292-4706, unless the incident is reported to this state under another state law.

(2) The generator, transporter, or owner or operator of a designated facility shall, within 30 days, prepare and maintain as part of his or her records a written report documenting the incident described in subsection (1) and the response action taken, including any supporting analytical data and cleanup activities. The report shall be provided to the department upon request. Both the initial notification, as appropriate, and the report shall include all of the following information:

(a) The name and telephone number of the person reporting the incident.

(b) The name, address, and telephone number of the generator, transporter, or designated facility, and the site identification number of the transporter or designated facility.

(c) The date, time, and type of incident.

(d) The name and quantity of liquid industrial by-product involved and discharged.

(e) The extent of injuries, if any.

(f) The estimated quantity and disposition of recovered materials that resulted from the incident, if any.

(g) An assessment of actual or potential hazards to human health or the environment.

(h) The response action taken.

(3) Incidents occurring in connection with activities regulated under part 615 or the rules, orders, or instructions under that part or regulated under part C of title XIV of the public health service act, 42 USC 300h to 300h-8, or the regulations promulgated under that act are exempt from the requirements of this section.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2008, Act 8, Imd. Eff. Feb. 20, 2008;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Popular name: Act 451

Popular name: NREPA

324.12112 Facility accepting liquid industrial by-product; duties of owner or operator; report.

Sec. 12112. (1) The owner or operator of a facility that accepts liquid industrial by-product shall accept

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delivery of by-product at the designated facility only if the facility is the destination indicated on the shipping document. The facility owner or operator shall do all of the following:

(a) Obtain a site identification number assigned by the United States Environmental Protection Agency or the department. Until October 1, 2017, the department shall assess a site identification number user charge of $50.00 for each site identification number it issues. The department shall not issue a site identification number under this subdivision unless the site identification number user charge and the tax identification number for the person applying for the site identification number have been received. Money collected under this subdivision shall be forwarded to the state treasurer for deposit into the environmental pollution prevention fund created in section 11130.

(b) Provide the generator or the generator's authorized representative confirmation of the receipt of the liquid industrial by-product.

(c) Maintain records of the characterization of the liquid industrial by-product. Characterization shall be in accordance with the requirements of this act.

(2) All storage, treatment, and reclamation of liquid industrial by-product at the designated facility shall be in either containers or tanks or as otherwise specified in section 12113(5). Storage, treatment, or reclamation regulated under part 615 or the rules, orders, or instructions promulgated under that part, or regulated under part C of title XIV of the public health service act, 42 USC 300h to 300h-8, or the regulations promulgated under that part are exempt from this subsection.

(3) The owner or operator of a designated facility shall not store liquid industrial by-product for longer than 1 year unless the by-product is being stored for purposes of reclamation and not less than 75% of the cumulative amount, by weight or volume, of each type of by-product that is stored on site each calendar year is reclaimed or transferred to a different site for reclamation during that calendar year. The owner or operator of a designated facility shall maintain documentation that demonstrates compliance with this subsection.

(4) The owner or operator of a designated facility shall do all of the following:

(a) Retain all records required pursuant to this part for a period of at least 3 years and shall make those records readily available for review and inspection by the department or a peace officer. The retention period required by this subdivision is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department. Records required under this part may be retained in electronic format.

(b) Maintain a plan designed to respond to and minimize hazards to human health and the environment from unplanned releases of liquid industrial by-product to air, soil, and surface water.

(c) Document that all employees who have a responsibility to manage liquid industrial by-product are trained in the proper handling and emergency procedures appropriate for their job duties.

(5) Except as provided in subsection (6), a designated facility shall submit to the department by April 30 each year a report describing its activities for the previous calendar year. The department shall provide for a method of electronic reporting. The report, at a minimum, shall include the following information:

(a) The name and address of the facility.

(b) The calendar year covered by the report.

(c) The types and quantities of liquid industrial by-product accepted and a description of the manner in which the liquid industrial by-product was processed or managed.

(6) A designated facility is not subject to the reporting requirements of subsection (5) for a calendar year if, during that calendar year, the designated facility received liquid industrial by-products only from 1 generator and was owned, operated, or legally controlled by that generator.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007;—Am. 2008, Act 8, Imd. Eff. Feb. 20, 2008;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2013, Act 73, Eff. Oct. 1, 2013;—Am. 2014, Act 286, Imd. Eff. Sept. 23, 2014;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Popular name: Act 451

Popular name: NREPA

324.12113 Treatment, storage, or disposal of liquid industrial by-product; requirements.

Sec. 12113. (1) Storage of liquid industrial by-product, whether at the location of generation, under the control of the transporter, or at the designated facility, shall be protected from weather, fire, physical damage, and vandals. All vehicles, containers, and tanks used to hold by-product shall be closed or covered, except when necessary to add or remove by-product, or otherwise managed in accordance with applicable state laws, to prevent the escape of by-product. The exterior of all vehicles, containers, and tanks used to hold by-product shall be kept free of by-product and its residue.

(2) Except as otherwise authorized pursuant to this section or other applicable statutes or rules or orders of the department, liquid industrial by-product shall be managed to prevent by-product from being discharged

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into the soil, surface water or groundwater, or a drain or sewer, or discharged in violation of part 55.

(3) A person shall treat, store, and dispose of liquid industrial by-product in accordance with all applicable statutes and rules and orders of the department.

(4) This part does not prohibit a publicly owned treatment works from accepting liquid industrial by-product from the premises of a person, and does not prohibit a person from engaging, employing, or contracting with a publicly owned treatment works. However, a publicly owned treatment works that receives by-product by means of transportation is a designated facility and shall comply with section 12112.

(5) A person shall not treat, store, or dispose of liquid industrial by-product in a surface impoundment, unless the surface impoundment has a discharge or storage permit authorized under part 31 or, in the case of leachate, is authorized in a permit issued under part 115.

(6) Activities regulated under part 615 or the rules, orders, or instructions under that part or regulated under part C of title XIV of the public health service act, 42 USC 300h to 300h-8, or the regulations promulgated under that act, are exempt from the requirements of this section.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2008, Act 8, Imd. Eff. Feb. 20, 2008;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Popular name: Act 451

Popular name: NREPA

324.12114 Violations; probable cause; powers of department or peace officer; court costs and other expenses; obtaining samples for purposes of enforcing or administering part.

Sec. 12114. (1) If the department or a peace officer has probable cause to believe that a person is violating this part, the department or a peace officer may search without a warrant a vehicle or equipment that is possessed, used, or operated by that person. The department or a peace officer may seize a vehicle, equipment, or other property used or operated in a manner or for a purpose in violation of this part. A vehicle, equipment, or other property used in violation of this part is subject to seizure and forfeiture as provided in chapter 47 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709.

(2) The court may award court costs and other expenses of litigation including attorney fees to a party who successfully brings an action under this section.

(3) The department or a peace officer may enter at reasonable times any generator, transporter, or designated facility or other place where liquid industrial by-products are or have been generated, stored, treated, or disposed of, or transported from and may inspect the facility or other place and obtain samples of the by-products and samples of the containers or labeling of the by-products for the purposes of enforcing or administering this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Popular name: Act 451

Popular name: NREPA

324.12115 Civil action; damages; court costs and other expenses.

Sec. 12115. (1) The attorney general may commence a civil action against a person in a court of competent jurisdiction for appropriate relief, including injunctive relief for a violation of this part, or a registration or permit issued pursuant to this part. The court has jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted under this section, the court may impose a civil fine of not more than $10,000.00 for each instance of violation and, if the violation is continuous, for each day of continued noncompliance. A fine collected under this subsection shall be deposited in the general fund.

(2) The attorney general or a person may bring a civil action in a court of competent jurisdiction to recover the full value of the damage done to the natural resources that are damaged or destroyed and the costs of surveillance and enforcement by the state as a result of a violation of this part. The damages and costs collected under this section shall be deposited in the general fund. However, if the damages result from the impairment or destruction of the fish, wildlife, or other natural resources of the state, the damages shall be deposited in the game and fish protection account of the Michigan conservation and recreation legacy fund provided in section 2010. The attorney general may, in addition, recover expenses incurred by the department to address and remedy a violation of this part that the department reasonably considered an imminent and substantial threat to the public health, safety, or welfare, or to the environment.

(3) The court may award court costs and other expenses of litigation including attorney fees to a party who successfully brings an action pursuant to this section or to a person who successfully defends against an action brought under this section that the court determines is frivolous.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

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"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.12116 Violations; penalties.

Sec. 12116. (1) A person that violates section 12105(c), 12107(2) or (3), 12109(4), or 12112(1)(b) is guilty of a misdemeanor punishable by imprisonment for not more than 30 days or a fine of not less than $200.00 and not more than $500.00, or both. A peace officer may issue an appearance ticket to a person who is in violation of section 12105(c), 12107(2) or (3), 12109(4), or 12112(1)(b).

(2) A person that knowingly makes or causes to be made a false statement or entry in a registration or permit application or a shipping document under this part is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not less than $2,500.00 or more than $10,000.00, or both.

(3) A person that violates this part or a registration or permit issued under this part, except as provided in subsections (1) and (2), is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not less than $1,000.00 or more than $2,500.00, or both.

(4) Each day that a violation continues constitutes a separate violation.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Popular name: Act 451

Popular name: NREPA

324.12117 Liquid industrial by-product transporter account.

Sec. 12117. (1) The liquid industrial by-product transporter account is created within the environmental pollution prevention fund, which is created in section 11130.

(2) The state treasurer may receive money or other assets from any source for deposit into the account. The state treasurer shall direct the investment of the account. The state treasurer shall credit to the account interest and earnings from account investments.

(3) Money remaining in the account at the close of the fiscal year shall not lapse to the general fund.

(4) The department shall expend money from the account, upon appropriation, for the implementation of this part. In addition, funds not expended from the account for the implementation of this part may be utilized for emergency response and cleanup activities related to liquid industrial by-product that are initiated by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Popular name: Act 451

Popular name: NREPA

324.12118 Repealed. 1998, Act 140, Eff. Sept. 1, 1998.

Compiler's note: The repealed section pertained to persons holding license on effective date of part.

Popular name: Act 451

Popular name: NREPA

CHAPTER 4
POLLUTION PREVENTION

PART 141
POLLUTION PREVENTION POLICY

PART 143
WASTE MINIMIZATION

324.14301 Definitions.

Sec. 14301. As used in this part:

(a) “Department” means the department of environmental quality.

(b) “Environmental wastes” means all environmental pollutants, wastes, discharges, and emissions, regardless of how they are regulated and regardless of whether they are released to the general environment or the workplace environment.

(c) “Pollution prevention” means all of the following:

(*i*) “Source reduction” as defined in the pollution prevention act of 1990, subtitle G of title VI of the omnibus budget reconciliation act of 1990, Public Law 101-508, 42 U.S.C. 13101 to 13109.

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(*ii*) “Pollution prevention” as described in the United States environmental protection agency's pollution prevention statement dated June 15, 1993.

(*iii*) Environmentally sound on-site or off-site reuse or recycling.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 289, Imd. Eff. July 27, 1998.

Popular name: Act 451

Popular name: NREPA

324.14302 Pollution prevention; incorporation; purpose; personnel and support staff.

Sec. 14302. (1) The department shall incorporate pollution prevention goals within its regulatory and permit programs, including data collection and analysis to advance the concept and implementation of pollution prevention.

(2) The department shall employ personnel and provide support staff as are necessary to implement this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 289, Imd. Eff. July 27, 1998.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.14303 Pollution prevention; duties of department; emphasis on in-plant pollution prevention and reduction of hazardous waste.

Sec. 14303. (1) The department shall do all of the following:

(a) Identify opportunities to encourage pollution prevention through the department's regulatory programs.

(b) Identify opportunities to encourage pollution prevention through the department's permit programs.

(c) Identify how pollution prevention efforts should be documented in environmental impact statements.

(d) Analyze and make recommendations on the value of imposing statewide goals or goals for particular environmental wastes, or both, for pollution prevention, minimum recycling standards, and environmental waste treatment standards.

(e) Publish an annual analysis of pollution prevention efforts and potentials in the state.

(2) In performing its responsibilities under subsection (1), the department shall place a particular emphasis on in-plant pollution prevention.

(3) Consistent with the congressional declaration in section 1003(b) of subtitle A of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6902, that it is the national policy of the United States that, wherever feasible, hazardous waste is to be reduced or eliminated as expeditiously as possible, the department shall place a particular emphasis on the prevention of an environmental waste that is a hazardous waste as defined in section 11103.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 289, Imd. Eff. July 27, 1998.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.14304 Transmitting certain information.

Sec. 14304. The department shall assure that relevant information received under section 313 of subtitle B of the emergency planning and community right-to-know act of 1986, title III of the superfund amendments and reauthorization act of 1986, Public Law 99-499, 42 U.S.C. 11023, is transmitted to the department.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 289, Imd. Eff. July 27, 1998.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.14305 Repealed. 1998, Act 289, Imd. Eff. July 27, 1998.

Compiler's note: The repealed section pertained to providing information to waste reduction assistance service and department of commerce liaison.

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Popular name: Act 451

Popular name: NREPA

324.14306 Annual report.

Sec. 14306. The department shall prepare and deliver, before January 1 of each year, a report detailing the efforts the department has undertaken during the previous fiscal year to implement this part. The annual report shall be delivered to the legislature, the governor, and the chairpersons of the appropriations committees in the senate and the house of representatives for their use in evaluating future appropriations for the department to implement this part. The annual report may include the information generated pursuant to sections 14303 and 14304 and may recommend changes in policies and regulatory approaches that will encourage pollution prevention.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 289, Imd. Eff. July 27, 1998.

Popular name: Act 451

Popular name: NREPA

PART 145
WASTE REDUCTION ASSISTANCE

324.14501 Definitions.

Sec. 14501. As used in this part:

(a) "Agricultural biomass" means residue and waste generated on a farm or by farm co-operative members from the production and processing of agricultural products, animal wastes, food processing wastes, or other materials as approved by the director.

(b) "Department" means the department of environmental quality.

(c) "Director" means the director of the department of environmental quality.

(d) "Eligible farmer or agricultural processor" means a person who processes agricultural products or a person who is engaged as an owner-operator of a farm in the production of agricultural goods as defined by section 35(1)(h) of the former single business tax act, 1975 PA 228, or by section 207(1)(d) of the Michigan business tax act, 2007 PA 36, MCL 208.1207.

(e) "Environmental wastes" means all environmental pollutants, wastes, discharges, and emissions, regardless of how they are regulated and regardless of whether they are released to the general environment or the workplace environment.

(f) "Pollution prevention" means all of the following:

(*i*) "Source reduction" as defined in 42 USC 13102.

(*ii*) "Pollution prevention" as described in the United States environmental protection agency's pollution prevention statement dated June 15, 1993.

(*iii*) Environmentally sound on-site or off-site reuse or recycling including, but not limited to, the use of agricultural biomass by qualified agricultural energy production systems.

(g) "Qualified agricultural energy production system" means the structures, equipment, and apparatus to be used to produce a gaseous fuel from the noncombustive decomposition of agricultural biomass and the apparatus and equipment used to generate electricity or heat from the gaseous fuel or store the gaseous fuel for future generation of electricity or heat. Qualified agricultural energy production system may include, but is not limited to, a methane digester, biomass gasification technology, or thermal depolymerization technology.

(h) "RETAP" means the retired engineers technical assistance program created in section 14511.

(i) "Retap fund" means the retired engineers technical assistance program fund created in section 14512.

(j) "Small business" means a business that is not dominant in its field as described in 13 CFR part 121 and meets both of the following requirements:

(*i*) Is independently owned or operated, by a person that employs 500 or fewer individuals.

(*ii*) Is a small business concern as defined in 15 USC 632.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 289, Imd. Eff. July 27, 1998;—Am. 2004, Act 333, Imd. Eff. Sept. 23, 2004;—Am. 2006, Act 254, Imd. Eff. July 5, 2006;—Am. 2007, Act 174, Imd. Eff. Dec. 21, 2007.

Popular name: Act 451

Popular name: NREPA

324.14502 Reduction in amount of generated environmental waste; emphasis on pollution prevention; personnel; staff and services.

Sec. 14502. (1) The department shall inform, assist, educate, and provide funding, as provided in this part, to persons to facilitate a reduction in the amount of environmental waste generated in the state. The

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department shall place a particular emphasis on in-plant pollution prevention.

(2) The department shall employ personnel and provide staff and services as are necessary to implement this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 289, Imd. Eff. July 27, 1998.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.14503 Pollution prevention information clearinghouse; establishment; duties; contracts.

Sec. 14503. (1) The department shall establish a pollution prevention information clearinghouse which shall do all of the following:

(a) Upon request, provide specific pollution prevention information to any person.

(b) Publish information describing pollution prevention technologies.

(c) Distribute available publications pertaining to pollution prevention.

(d) Sponsor pollution prevention workshops targeted at specific industries.

(e) Participate in conferences and meetings of business organizations.

(f) Provide information and application forms as necessary to fulfill the department's responsibilities under sections 14505 and 14506.

(2) The department may contract to have any of the activities provided in subsection (1) performed by persons other than department personnel.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 289, Imd. Eff. July 27, 1998.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.14504 Pollution prevention technical assistance.

Sec. 14504. The department shall provide and support technical assistance regarding pollution prevention to business and industry throughout the state and shall do all of the following:

(a) Provide instruction on self-conducted environmental waste audits pertaining to pollution prevention.

(b) Provide consultant referrals pertaining to pollution prevention.

(c) Provide on-site assistance to business and industry pertaining to pollution prevention.

(d) Provide other information and assistance that is considered appropriate by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 289, Imd. Eff. July 27, 1998.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.14505 Repealed. 1998, Act 289, Imd. Eff. July 27, 1998.

Compiler's note: The repealed section pertained to establishment of waste reduction grants program.

Popular name: Act 451

Popular name: NREPA

324.14506 Pollution prevention research grants program; establishment; distribution of information and applications for grants; form and contents of application; recipients of grants; considerations.

Sec. 14506. (1) The department shall establish a pollution prevention research grants program.

(2) Information and applications for grants under this section shall be distributed upon request through the department.

(3) An application for a grant under this section shall be on a form provided by the department and shall contain information required by the director.

(4) The director shall make grants to colleges and universities, nonprofit corporations, or industry associations or other persons for industry specific research projects pertaining to pollution prevention.

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(5) The director, in making grants pursuant to this section, shall consider all of the following:

(a) The severity of the environmental waste problem being addressed.

(b) The extent that the technological development will reduce the volume or quantity or toxicity of environmental waste generated.

(c) The potential for the application of pollution prevention technology to other persons.

(d) The ability of the applicant to contribute matching funds.

(e) The percentage reduction of volume or quantity or toxicity of environmental waste that will be achieved.

(f) The likelihood of the applicant's project qualifying for other research grants or subsequent research grants from other sources.

(g) Whether the project is consistent with state law and policy.

(h) Additional criteria as the director considers appropriate.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 289, Imd. Eff. July 27, 1998.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.14507-324.14509 Repealed. 1998, Act 289, Imd. Eff. July 27, 1998.

Compiler's note: The repealed sections pertained to waste reduction advisory committee.

Popular name: Act 451

Popular name: NREPA

324.14510 Annual report.

Sec. 14510. (1) The department shall prepare and deliver, before January 1 of each year, a report detailing the efforts the department, including RETAP, has undertaken during the previous fiscal year to implement this part. The annual report shall be delivered to the legislature, the governor, and the chairpersons of the appropriations committees in the senate and the house of representatives for their use in evaluating future appropriations for the service.

(2) By July 1, 1999, the department shall submit a report to the governor and legislature on the pollution prevention impacts of toxic materials accounting and toxics use reporting programs of other states and the federal government. The report shall evaluate the costs and benefits of such programs and shall recommend whether the state should implement such programs to foster pollution prevention.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 289, Imd. Eff. July 27, 1998.

Popular name: Act 451

Popular name: NREPA

324.14511 Retired engineers technical assistance program; establishment; conduct; contract; priorities.

Sec. 14511. (1) The department shall establish a retired engineers technical assistance program. The RETAP shall provide assistance pursuant to section 14504. RETAP assistance shall be conducted by the retired engineers, scientists, and other qualified professionals participating in RETAP.

(2) The department may contract with public or private corporations to conduct 1 or more RETAP activities. Prior to entering into a contract under this subsection, the department shall submit the proposed contract to the legislature.

(3) The director may establish priorities for RETAP assistance based on the demand for RETAP assistance, the funds available for the assistance, and the needs of the applicants, taking into consideration the most effective use of the assistance.

History: Add. 1998, Act 289, Imd. Eff. July 27, 1998.

Popular name: Act 451

Popular name: NREPA

324.14512 Retired engineers technical assistance program fund; creation; disposition of funds; limitation; lapse; annual report; expenditure.

Sec. 14512. (1) The retired engineers technical assistance program fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the RETAP fund. The state treasurer shall direct the investment of the RETAP fund. The state treasurer shall credit to the

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RETAP fund interest and earnings from fund investments.

(3) The total amount of money in the RETAP fund shall not exceed $10,000,000.00.

(4) To capitalize the RETAP fund, $700,000.00 from fees collected under section 11108 is appropriated and transferred from the general fund to the RETAP fund. If the RETAP fund is capitalized from a different source, $700,000.00 is appropriated and transferred from the RETAP fund back to the waste reduction fee fund.

(5) Money in the RETAP fund at the close of the fiscal year shall remain in the RETAP fund and shall not lapse to the general fund.

(6) The state treasurer shall annually report to the legislature on the amount of money in the RETAP fund.

(7) The department shall expend money from the RETAP fund, upon appropriation, to administer and operate the RETAP.

History: Add. 1998, Act 289, Imd. Eff. July 27, 1998.

Popular name: Act 451

Popular name: NREPA

324.14513 Small business pollution prevention assistance revolving loan fund; creation; disposition; lapse; expenditure; loan eligibility requirements; loan limitations; “fund” defined.

Sec. 14513. (1) The small business pollution prevention assistance revolving loan fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall expend money from the fund, upon appropriation, to provide loans to small businesses to implement pollution prevention projects. For each loan issued under this section, the money shall be disbursed by the department to a lending institution that has entered into a loan participation agreement with the department.

(5) To be eligible for a loan from the fund for a qualified agricultural energy production system, an applicant shall meet all of the following requirements:

(a) The applicant shall be an eligible farmer or agricultural processor, or a for-profit farmer cooperative corporation organized under and operated in accordance with sections 98 to 109 of 1931 PA 327, MCL 450.98 to 450.109.

(b) The applicant shall be verified under the appropriate system of the Michigan agriculture environmental assurance program administered by the department of agriculture.

(c) Within a 3-year period immediately preceding the date the application was submitted, the applicant shall not have been found guilty of a criminal violation under this act.

(d) Within a 1-year period immediately preceding the date the application was submitted, the applicant shall not have been found responsible for a civil violation under this act that resulted in a civil fine of $10,000.00 or more.

(6) The amount of a loan from the fund shall not exceed $200,000.00. A small business shall not receive more than 1 loan in any 3-year period. Interest rates paid by the small business shall be set by the director, but shall not exceed 5%.

(7) As used in this section, "fund" means the small business pollution prevention assistance revolving loan fund created in subsection (1).

History: Add. 1998, Act 289, Imd. Eff. July 27, 1998;—Am. 2004, Act 334, Imd. Eff. Sept. 23, 2004;—Am. 2006, Act 254, Imd. Eff. July 5, 2006.

Popular name: Act 451

Popular name: NREPA

324.14514 Rules.

Sec. 14514. The department may promulgate rules to implement and administer this part.

History: Add. 2004, Act 333, Imd. Eff. Sept. 23, 2004.

Popular name: Act 451

Popular name: NREPA

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SUBPART 1
PCB COMPOUNDS

324.14701 Repealed. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

The repealed section pertained to definitions.

Popular name: Act 451

Popular name: NREPA

324.14702 Repealed. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

The repealed section pertained to duties of department for administration and implementation of subpart.

Popular name: Act 451

Popular name: NREPA

324.14703 Repealed. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Compiler's note: The repealed section pertained to determination by rule that certain compounds constitute sufficient danger to public health, safety, and welfare.

Popular name: Act 451

Popular name: NREPA

324.14704 Repealed. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Compiler's note: The repealed section pertained to disposal of certain solid or liquid wastes.

Popular name: Act 451

Popular name: NREPA

324.14705 Repealed. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Compiler's note: The repealed section pertained to violation of subpart as misdemeanor.

Popular name: Act 451

Popular name: NREPA

SUBPART 2
PBDE COMPOUNDS

324.14721 Definitions; heading of subpart.

Sec. 14721. (1) As used in this subpart:

(a) "Department" means the department of environmental quality.

(b) "Octa-BDE" means octabromodiphenyl ether.

(c) "PBDE" means polybrominated diphenyl ether.

(d) "Penta-BDE" means pentabromodiphenyl ether.

(2) This subpart may be cited as the "Mary Beth Doyle PBDE act".

History: Add. 2004, Act 526, Imd. Eff. Jan. 3, 2005.

Popular name: Act 451

Popular name: NREPA

324.14722 Product or material containing penta-BDE; limitation; exceptions.

Sec. 14722. (1) Beginning June 1, 2006, a person shall not manufacture, process, or distribute a product or material that contains more than 1/10 of 1% of penta-BDE.

(2) This section does not apply to either of the following:

(a) Original equipment manufacturer replacement parts.

(b) The processing of recyclables containing penta-BDE in compliance with applicable federal, state, and local laws.

History: Add. 2004, Act 562, Imd. Eff. Jan. 3, 2005.

Popular name: Act 451

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Popular name: NREPA

324.14723 Product or material containing octa-BDE; limitation; manufacturing, processing, or distributing; exception.

Sec. 14723. (1) Beginning June 1, 2006, a person shall not manufacture, process, or distribute a product or material that contains more than 1/10 of 1% of octa-BDE.

(2) This section does not apply to original equipment manufacturer replacement service parts or the processing of recyclables containing octa-BDE in compliance with applicable federal, state, and local laws.

History: Add. 2004, Act 526, Imd. Eff. Jan. 3, 2005.

Popular name: Act 451

Popular name: NREPA

324.14724 PBDE advisory committee; recommendations.

Sec. 14724. The department may establish a PBDE advisory committee to assist the department in determining the risk posed by the release of PBDEs, other than penta-BDE or octa-BDE, to human health and the environment. The department may use existing programs to monitor the presence of PBDEs in the state's environment to determine exposure and risk. If new scientific information gathered by the advisory committee indicates a significant risk to human health and the environment in the state, the advisory committee shall inform the department of risk or risks and, if the department concurs, the department shall advise the legislature of the risk. Nothing in this section shall preclude the department from issuing recommendations to the legislature independent of any actions of the advisory committee.

History: Add. 2004, Act 526, Imd. Eff. Jan. 3, 2005.

Compiler's note: For transfer of PBDE advisory committee to department of environmental quality by type III transfer, see E.R.O. No. 2009-11, compiled at MCL 324.99915.

Popular name: Act 451

Popular name: NREPA

324.14725 Violation as misdemeanor; penalty.

Sec. 14725. A person who violates this subpart is guilty of a misdemeanor punishable by a fine of not less than $2,500.00 or more than $25,000.00. Each day that a violation of this subpart continues shall be considered a separate violation.

History: Add. 2004, Act 562, Imd. Eff. Jan. 3, 2005.

Popular name: Act 451

Popular name: NREPA

PART 148
ENVIRONMENTAL AUDIT PRIVILEGE AND IMMUNITY

324.14801 Definitions.

Sec. 14801. As used in this part:

(a) “Environmental audit” means a voluntary and internal evaluation conducted on or after the effective date of this part of 1 or more facilities or an activity at 1 or more facilities regulated under state, federal, regional, or local laws or ordinances, or of environmental management systems or processes related to the facilities or activity, or of a previously corrected specific instance of noncompliance, that is designed to identify historical or current noncompliance and prevent noncompliance or improve compliance with 1 or more of those laws, or to identify an environmental hazard, contamination, or other adverse environmental condition, or to improve an environmental management system or process. Once initiated, an audit shall be completed within a reasonable time, not to exceed 6 months, unless a written request for an extension is approved by the director on reasonable grounds.

(b) “Environmental audit report” means a document or a set of documents, each labeled at the time it is created “environmental audit report: privileged document” and created as a result of an environmental audit. An environmental audit report shall include supporting information. Supporting information may include field notes, records of observations, findings, opinions, suggestions, conclusions, drafts, memoranda, follow-up reports, drawings, photographs, computer generated or electronically recorded information, maps, charts, graphs, and surveys, if the supporting information or documents are created or prepared for the primary purpose and in the course of or as a result of an environmental audit. An environmental audit report may also include an implementation plan that addresses correcting past noncompliance, improving current compliance, improving an environmental management system, and preventing future noncompliance, as appropriate.

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(c) “Privilege” means the privilege provided to an environmental audit report as provided in this part.

History: Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996;—Am. 1997, Act 133, Imd. Eff. Nov. 14, 1997.

Popular name: Act 451

Popular name: NREPA

324.14802 Environmental audit and environmental audit report; conduct; creation; privilege and protection from disclosure; exception; testimony; admissibility as evidence.

Sec. 14802. (1) The owner or operator of a facility, or an employee or agent of the owner or operator on behalf of the owner or operator, at any time may conduct an environmental audit and may create an environmental audit report.

(2) Except as provided in subsection (3), an environmental audit report created pursuant to this part is privileged and protected from disclosure under this part.

(3) The privilege described in subsection (2) does not extend to any of the following regardless of whether or not they are included within an environmental audit report:

(a) Documents, communication, data, reports, or other information required to be collected, maintained, or made available or reported to a regulatory agency or any other person by statute, rule, ordinance, permit, order, consent agreement, or as otherwise provided by law.

(b) Information obtained by observation, sampling, or monitoring by any regulatory agency.

(c) Pretreatment monitoring results which a publicly owned treatment works or control authority requires any industrial user to report to a publicly owned treatment works or control authority, including, but not limited to, results establishing a violation of the industrial user's discharge permit or applicable local ordinance.

(d) Information legally obtained from a source independent of the environmental audit or from a person who did not obtain the information from the environmental audit.

(e) Machinery and equipment maintenance records.

(f) Information in instances where the privilege is asserted for a fraudulent purpose.

(g) Information in instances where the material shows evidence of noncompliance with state, federal, regional, or local environmental laws, permits, consent agreements, regulations, ordinances, or orders and the owner or operator failed to either take prompt corrective action or eliminate any violation of law identified during the environmental audit within a reasonable time, but not exceeding 3 years after discovery of the noncompliance or violation unless a longer period of time is set forth in a schedule of compliance in an order issued by the department of environmental quality, after notice in the department's calendar, and following the department's determination that acceptable progress is being made.

(4) Except as otherwise provided in this part, a person who conducts an environmental audit and a person to whom the environmental audit results are disclosed shall not be compelled to testify regarding any information obtained solely through the environmental audit which is a privileged portion of the environmental audit report. Except as otherwise provided in this part, the privileged portions of an environmental audit report are not subject to discovery and are not admissible as evidence in any civil or administrative proceeding.

History: Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996;—Am. 1997, Act 133, Imd. Eff. Nov. 14, 1997.

Popular name: Act 451

Popular name: NREPA

324.14803 Waiver of privilege.

Sec. 14803. (1) The privilege provided for in this part may be expressly waived by the person for whom the environmental audit report was prepared. The waiver applies only to the portion or portions of the environmental audit report that are specifically waived.

(2) Disclosure of an environmental audit report and information generated by the environmental audit by the person for whom the environmental audit report was prepared or by the person's employee or agent to any of the following does not waive the privilege provided for in this part:

(a) An employee of the person.

(b) A legal representative of the person.

(c) An agent of the person retained to address an issue or issues raised by the environmental audit.

(3) Disclosure of the environmental audit report or any information generated by the environmental audit under the following circumstances does not waive the privilege provided for in this part:

(a) A disclosure made under the terms of a confidentiality agreement between the person for whom the environmental audit report was prepared and a partner or potential partner, or a transferee or potential

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transferee of, or a lender or potential lender for, or a trustee of, the business or facility audited, or a disclosure made between a subsidiary and a parent corporation or between members of a partnership, joint venture, or other similarly related entities.

(b) A disclosure made under the terms of a confidentiality agreement between governmental officials and the person for whom the environmental audit report was prepared.

History: Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996.

Popular name: Act 451

Popular name: NREPA

324.14804 Request for disclosure by state or local law enforcement authorities; objection; petition; in camera hearing; determination by court; disclosure pending appeal.

Sec. 14804. (1) A request by state or local law enforcement authorities for disclosure of an environmental audit report shall be made by a written request delivered by certified mail or a demand by lawful subpoena. Within 30 business days after receipt of a request for disclosure or subpoena, the person asserting the privilege may make a written objection to the disclosure of the environmental audit report on the basis that the environmental audit report is privileged. Upon receipt of such an objection, the state or local law enforcement authorities may file with the circuit court, and serve upon the person, a petition requesting an in camera hearing on whether the environmental audit report or portions of the environmental audit report are privileged or subject to disclosure. The motion shall be brought in camera and under seal. The circuit court has jurisdiction over a petition filed under this subsection requesting a hearing. Failure of the person asserting the privilege to make an objection to disclosure waives the privilege as to that person.

(2) Upon the filing of a petition for an in camera hearing under subsection (1), the person asserting the privilege in response to a request for disclosure or subpoena under this section shall provide a copy of the environmental audit report to the court and shall demonstrate in the in camera hearing all of the following:

(a) The year the environmental audit report was prepared.

(b) The identity of the person conducting the audit.

(c) The name of the audited facility or facilities.

(d) A brief description of the portion or portions of the environmental audit report for which privilege is claimed.

(3) Upon the filing of a petition for an in camera hearing under subsection (1), the court shall issue an order under seal scheduling, within 45 days after the filing of the petition, an in camera hearing to determine whether the environmental audit report or portions of the environmental audit report are privileged or subject to disclosure. The counsel for the state or local law enforcement agency seeking disclosure of the information contained in the environmental audit report and the counsel for the person asserting the privilege shall participate in the in camera hearing but shall not disclose the contents of the environmental audit report for which privilege is claimed unless the court so orders.

(4) The court, after in camera review, shall require disclosure of material for which privilege is asserted, if the court determines that either of the following exists:

(a) The privilege is asserted for a fraudulent purpose.

(b) Even if subject to the privilege, the material shows evidence of noncompliance with state, federal, regional, or local environmental laws, permits, consent agreements, regulations, ordinances, or orders and the owner or operator failed to either take prompt corrective action or eliminate any violation of law identified during the environmental audit within a reasonable time, but not exceeding 3 years after discovery of the noncompliance or violation unless a longer period of time is set forth in a schedule of compliance in an order issued by the department of environmental quality, after notice in the department's calendar, and following the department's determination that acceptable progress is being made.

(5) The court, after in camera review, shall require disclosure of material for which privilege is asserted if the court determines that the material is not subject to the privilege.

(6) If the court determines under this section that the material is not privileged, but the party asserting the privilege files an application for leave to appeal of this finding, the material, motions, and pleadings shall be disclosed unless the court specifically determines that all or a portion of such information shall be kept under seal during the pendency of the appeal.

History: Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996;—Am. 1997, Act 133, Imd. Eff. Nov. 14, 1997.

Popular name: Act 451

Popular name: NREPA

324.14805 Criminal proceeding; applicability of privilege.

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Sec. 14805. The privilege created by this part does not apply to criminal investigations or proceedings. Where an audit report is obtained, reviewed, or used in a criminal proceeding, the privilege created by this part applicable to administrative or civil proceedings is not waived or eliminated.

History: Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996;—Am. 1997, Act 133, Imd. Eff. Nov. 14, 1997.

Popular name: Act 451

Popular name: NREPA

324.14806 Privilege; burden of proof; stipulation; disclosure of relevant portions of report.

Sec. 14806. (1) A person asserting the privilege under this part has the burden of proving a prima facie case as to the privilege. A person seeking disclosure of an environmental audit report has the burden of proving by a preponderance of the evidence that privilege does not exist under this part.

(2) The parties disputing the existence of the privilege may at any time stipulate to entry of an order directing that specific information contained in an environmental audit report is or is not subject to the privilege.

(3) Upon making a disclosure determination under section 14804 or 14805, the court may compel the disclosure only of those portions of an environmental audit report relevant to issues in dispute in the proceeding.

History: Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996.

Popular name: Act 451

Popular name: NREPA

324.14807 Fraud as misdemeanor; penalty.

Sec. 14807. A person who uses this part to commit fraud is guilty of a misdemeanor punishable by a fine of not more than $25,000.00.

History: Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996.

Popular name: Act 451

Popular name: NREPA

324.14808 Other privileges not limited.

Sec. 14808. This part does not limit, waive, or abrogate either of the following:

(a) The scope or nature of any statutory or common law privilege, including the work product doctrine and the attorney-client privilege.

(b) Any existing ability or authority to challenge privilege under Michigan law.

History: Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996;—Am. 1997, Act 133, Imd. Eff. Nov. 14, 1997.

Popular name: Act 451

Popular name: NREPA

324.14809 Immunity from civil and criminal penalties and fines.

Sec. 14809. (1) A person is immune from any administrative or civil penalties and fines under this act and from criminal penalties and fines for negligent acts or omissions under this act related to a violation of article II and chapters 1 and 3 of article III and the rules promulgated under those articles if the person makes a voluntary disclosure to the appropriate state or local agency. However, the immunity provided for in this section does not apply to any criminal penalties and fines for gross negligence or to any criminal penalties and fines for violations of part 301, 303, 315, or 325 or section 3108 or 3115a. At the time that the disclosure is made to the state or local agency, the person making the voluntary disclosure under this section shall provide information showing that the conditions of subdivisions (a) to (d) are met, supporting his or her claim that the disclosure is voluntary. For the purposes of this section, a disclosure of information by a person under this section is voluntary if all of the following occur:

(a) The disclosure is made promptly after knowledge of the information disclosed is obtained by the person.

(b) The person making the disclosure initiates an appropriate and good-faith effort to achieve compliance, pursues compliance with due diligence, and promptly corrects the noncompliance or condition after discovery of the violation. If evidence shows the noncompliance is the failure to obtain a permit, appropriate and good-faith efforts to correct the noncompliance may be demonstrated by the submittal of a complete permit application within a reasonable time.

(c) The disclosure of the information arises out of an environmental audit.

(d) The environmental audit occurs before the person is made aware that he or she is under investigation by

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a regulatory agency for potential violations of this act.

(2) There is a rebuttable presumption that a disclosure made pursuant to and in full compliance with this section is voluntary. The presumption of voluntary disclosure under this section may be rebutted by presentation of an adequate showing to the administrative hearing officer or appropriate trier of fact that the disclosure did not satisfy the requirements for a voluntary disclosure under subsection (1). In any administrative or judicial proceeding pursuant to this subsection, the person claiming that a disclosure is voluntary shall provide the supporting information required in subsection (1) and a showing of the appropriate and good-faith effort to achieve compliance, shall pursue compliance with due diligence, and shall promptly correct the noncompliance in the period of time since the date of the disclosure. The state or local agency shall bear the burden of rebutting the presumption of voluntariness. Agency action determining that disclosure was not voluntary shall be considered final agency action subject to judicial review.

(3) Unless a final determination shows that a voluntary disclosure has not occurred, a notice of violation or cease and desist order shall not include any administrative or civil penalty or fine or any criminal penalty or fine for violations for which immunity is provided under this section.

(4) The elimination of administrative or civil penalties or fines or criminal penalties or fines under this section does not apply if the trier of fact finds any of the following:

(a) The person has knowingly committed a criminal act.

(b) The person has committed significant violations that constitute a pattern of continuous or repeated violations of environmental laws, rules, regulations, permit conditions, settlement agreements, or orders of consent or judicial orders and that were due to separate and distinct events giving rise to the violations, within the 3-year period prior to the date of the disclosure. For purposes of this subsection, a pattern of continuous or repeated violations may also be demonstrated by multiple settlement agreements related to substantially the same alleged violations concerning serious instances of noncompliance with environmental laws that occurred within the 3-year period immediately prior to the date of the voluntary disclosure. In determining whether a person has a pattern of continuous or repeated violations under this subsection, the trier of fact shall base the decision on the compliance history of the specific facility at issue.

(c) The violation has resulted in a substantial economic benefit which gives the violator a clear advantage over its business competitors.

(d) The instance of noncompliance resulted in serious harm or in imminent and substantial endangerment to human health or the environment.

(e) The violation is of the terms of an administrative or judicial order.

(5) In those cases where the conditions of a voluntary disclosure are not met but a good-faith effort was made to voluntarily disclose and resolve a violation detected in a voluntary environmental audit, the state and local environmental and law enforcement authorities shall consider the nature and extent of any good-faith effort in deciding the appropriate enforcement response and shall mitigate any civil penalties based on a showing that 1 or more of the conditions for voluntary disclosure have been met.

(6) The immunity provided by this section does not abrogate a person's responsibilities as provided by applicable law to correct the violation, conduct necessary remediation, or pay damages.

(7) In order to receive immunity under this section, a facility conducting an environmental audit under this part shall give notice to the department of the fact that it is planning to commence the audit. The notice shall specify the facility or portion of the facility to be audited, the anticipated time the audit will begin, and the general scope of the audit. The notice may provide notification of more than 1 scheduled environmental audit at a time.

History: Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996;—Am. 1997, Act 134, Imd. Eff. Nov. 14, 1997.

Popular name: Act 451

Popular name: NREPA

324.14809a Authority of other provisions not limited.

Sec. 14809a. Except for the immunity provided in section 14809, this part does not limit or affect the authority of any other provision of this act or any other provision of law.

History: Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996.

Popular name: Act 451

Popular name: NREPA

324.14810 Data base.

Sec. 14810. (1) The department of environmental quality shall establish and maintain a data base of the voluntary disclosures made under this part. The data base shall include the number of voluntary disclosures

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made on an annual basis and shall summarize in general categories the types of violations and the time needed to achieve compliance. The department of environmental quality shall annually publish a report containing the information in this data base.

(2) Within 5 years after the effective date of this part, the department of environmental quality shall prepare and submit to the standing committees of the legislature with jurisdiction over issues pertaining to natural resources and the environment a report evaluating the effectiveness of this part and specifically detailing whether this part has been effective in encouraging the use of environmental audits and in identifying and correcting environmental problems and conditions.

History: Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996.

Popular name: Act 451

Popular name: NREPA

CHAPTER 5

RECYCLING AND RELATED SUBJECTS

PART 161

PLASTIC PRODUCTS LABELING

324.16101 Definitions.

Sec. 16101. As used in this part:

(a) "Degradable" means capable of being broken down by biodegradation, photodegradation, or chemical degradation into component parts within 360 days under exposure to the elements.

(b) "Label" means a molded, imprinted, or raised symbol on or near the bottom of a plastic product.

(c) "Plastic" means any material made of polymeric organic compounds and additives that can be shaped by flow.

(d) "Plastic bottle" means a rigid plastic container with a capacity of 16 ounces or more that has a neck that is smaller than the body of the container.

(e) "Plastic product" means a plastic bottle and any other rigid plastic container.

(f) "Rigid plastic container" means any container composed predominantly of plastic resin and having a relatively inflexible finite shape or form that directly holds a substance or material and has a capacity of 8 ounces or more.

(g) "PETE" means polyethylene terephthalate.

(h) "HDPE" means high density polyethylene.

(i) "V" means vinyl.

(j) "LDPE" means low density polyethylene.

(k) "PP" means polypropylene.

(*l*) "PS" means polystyrene.

(m) "OTHER" means multilayer.

(n) "D" means degradable.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.16102 Plastic products; labeling with code; list of label codes; copies of list.

Sec. 16102. (1) All plastic products sold in this state shall be labeled with a code indicating the plastic resin used to produce the product. The code shall consist of a number placed within a triangle of arrows with letters placed below the triangle of arrows. The triangle shall be equilateral, formed by 3 arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The pointer or arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle, formed by the 3 arrows curved at their midpoints shall depict a clockwise path around the code number. The triangle of arrows shall be not less than 1/2 inch high or if the plastic product is designed so that a triangle or arrows of not less than 1/2 inch height cannot be added to the product, a smaller label may be used if the label can be easily read. The code shall appear on or near the bottom of the plastic product as follows:

(a) 1 PETE.

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(b) 2 HDPE.
(c) 3 V.
(d) 4 LDPE.
(e) 5 PP.
(f) 6 PS.
(g) 7 OTHER.
(h) 8 D.

(2) The department shall maintain a list of the label codes provided in subsection (1) and shall provide a copy of that list to any person upon request.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.16103 Additional staff prohibited.

Sec. 16103. Additional staff shall not be hired by the department for the purposes of enforcing this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.16104 Violation; civil fine; default; remedy.

Sec. 16104. (1) A person who violates this part is subject to a civil fine of $500.00 per violation.

(2) A default in the payment of a civil fine ordered under this part may be remedied by any means authorized under the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.101 to 600.9947 of the Michigan Compiled Laws.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

PART 163
PLASTIC DEGRADABLE CONTAINERS

324.16301 Definitions.

Sec. 16301. As used in this part:

(a) “Containers” means glass, metal, or plastic bottles, cans, jars, or other receptacles that contain any substance.

(b) “Degradable” means capable of being broken down by biodegradation, photodegradation, or chemical degradation into component parts within 360 days under exposure to the elements.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.16302 Container holding devices constructed of plastic rings; design and registration of symbol; test data; vacuum-packed wrapping.

Sec. 16302. (1) A person shall not sell or offer for sale in this state containers connected to each other by a separate holding device that is constructed of plastic rings unless the device is degradable and bears a distinguishing symbol.

(2) A manufacturer of container holding devices that are constructed of plastic rings who sells or offers for sale or provides for the sale or offer for sale in this state of these devices shall design a distinguishing symbol indicating that the devices are degradable and shall register the distinguishing symbol with the department and provide the department with a sample of the device. The department may require test data that show that the device is degradable as required in this part.

(3) As used in this part, a separate holding device does not include a vacuum-packed wrapping that completely encases the containers that it connects.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

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Popular name: NREPA

324.16303 Violation as misdemeanor; penalty.

Sec. 16303. A person who violates this part is guilty of a misdemeanor punishable by a fine of $500.00 for each day this part is violated.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

PART 165
OFFICE PAPER RECOVERY

324.16501 Definitions.

Sec. 16501. As used in this part:

(a) "Accessible and available market" means that opportunities exist to sell wastepaper products that are collected pursuant to this part at rates and at locations that make it fiscally reasonable to collect that paper.

(b) "Recycled paper" means a paper product that contains not less than 50% wastepaper.

(c) "Wastepaper" means any discarded paper or corrugated paper board that is generated after the completion of the paper manufacturing process, and includes, but is not limited to, trimmings, printed paper, cutting and converting paper, newsprint, telephone books, catalogs, or other mixed postconsumer paper. Wastepaper does not include mill broke or other in-plant residual wastes.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.16502 Paper recycling system; establishment; purpose; scope; schedule; functions.

Sec. 16502. (1) The department shall establish and implement a paper recycling system to recycle wastepaper products that are recyclable and for which there is an accessible and available market. The recycling system shall include the recyclable wastepaper products generated in the offices and other facilities of state departments and state agencies, the offices and other facilities of the legislature, and the judicial offices and other facilities within this state. The department may work with other state departments and hire private contractors to establish or implement all or a portion of the recycling system under this part. The paper recycling system established by the department shall provide for the recycling of wastepaper in the offices and facilities that participate in that system, in accord with the following schedule:

(a) January 1, 1989.....20% or more.

(b) January 1, 1990.....25% or more.

(c) January 1, 1992.....50% or more.

(d) January 1, 2000.....85% or more.

(2) The paper recycling system established by the department shall provide for the expansion and improvement of any wastepaper recycling system that exists on March 30, 1989 and shall provide for all of the following:

(a) An aggressive program to locate and develop, if necessary, markets for recyclable wastepaper products.

(b) An education program to assure that employees who participate in the recycling system are knowledgeable about both of the following:

(*i*) The importance of recycling paper.

(*ii*) The components of the paper recycling system and how the system will impact each employee.

(c) The recovery of all wastepaper for which a market is available and accessible.

(d) The separation of the recyclable wastepaper by the generator in close proximity to the point at which the paper product enters the waste stream.

(e) A central collection system within each building or office of facility that is participating in the recycling system.

(f) The compiling of information and the preparation of an annual written report to be sent to the governor, the senate majority leader, the speaker of the house, and the chief justice of the supreme court, detailing the implementation and operation of the paper recycling system; the level of participation in the paper recycling system of offices, facilities, and agencies within each branch of government; the availability of markets for the wastepaper collected; recommendations on how the market for recycled paper can be stimulated; and

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recommendations regarding whether the system can be and should be expanded.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.16503 Proceeds of paper recycling system; disposition; use.

Sec. 16503. The proceeds of the paper recycling system shall be forwarded to the state treasurer and credited to the office services revolving fund created in section 269 of the management and budget act, Act No. 431 of the Public Acts of 1984, being section 18.1269 of the Michigan Compiled Laws, to be utilized by the department of management and budget to implement this part and to reimburse other state departments that incur expenses under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

PART 167
USED OIL RECYCLING

324.16701 Definitions.

Sec. 16701. As used in this part:

(a) “Motor oil” means oil used as a lubricant in a motor vehicle.

(b) “Oil” means petroleum based oil.

(c) “Recycle” means to prepare used oil for reuse as a petroleum product by refining, rerefining, reclaiming, reprocessing, or other means to utilize used oil in a manner that substitutes for a petroleum product made from new oil, if the preparation or use is operationally safe, environmentally sound, and complies with the law, rules, and regulations of this state and the United States.

(d) “Used oil” means oil which through use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.16702 Plan to promote recycling of motor oil; public education program.

Sec. 16702. The department shall implement a plan to promote the recycling of motor oil by the public and private sectors. The department shall conduct a public education program to inform the public and private sectors of the need for, and benefit of, collecting and recycling used oil in order to conserve resources and protect the natural resources of this state.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.16703 Plan to recycle motor oil; demonstration used oil recycling project; project plan; funding.

Sec. 16703. (1) The director of the department of management and budget shall formulate and implement a plan to recycle the motor oil used by the departments and agencies of this state.

(2) The department shall conduct a demonstration used oil recycling project that does all of the following:

(a) Provides for a system of used oil recycling tanks or barrels for use by the general public. The recycling tanks or barrels shall be located in designated state owned vehicle maintenance garages or other publicly owned structures that the department determines meet both of the following criteria:

(*i*) Are locations where used oil is generated from oil changes for state owned vehicles or vehicles operated

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under contracts with this state.

(*ii*) Are locations where oil recycling services are not otherwise available to the general public.

(b) Promotes public awareness of the availability to the general public of recycling tanks or barrels for used oil.

(3) The department shall establish a project plan for conducting the demonstration project provided for in subsection (2). The project plan shall include the number of locations, proposed sites, methods of public notice, security procedures, and model language for cooperative agreements with other state agencies for use of their facilities in the demonstration project.

(4) Funding necessary to implement this part may come from any lawful source, including appropriations, funds from private sources, and funds generated from the sale of general obligation bonds.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.16704 Disposal of used oil; designation of land as collection facility; placement in receptacle or container; applicability of subsection (1); disposal of used oil in municipal solid waste incinerator; violation as misdemeanor; penalty; enforcement actions; criteria used in designating collection facilities.

Sec. 16704. (1) A person shall not dispose of or cause the disposal of used oil by dumping used oil onto the ground; discharging, dumping, or depositing used oil into sewers, drainage systems, surface waters, groundwaters, or other waters of this state; except as provided in subsection (2), by incineration; as refuse; or onto any public or private land unless the land is designated by the state or an agency or political subdivision of the state as a collection facility for the disposal, dumping, or deposit of used oil and if the used oil is placed in a receptacle or container installed or located at the collection facility.

(2) Subsection (1) does not apply to the use of used oil in an incinerator or other heater that is operated for purposes of providing heat or energy, or as a rust preventive coating on farm or construction equipment.

(3) Notwithstanding subsection (2), beginning March 28, 1994, used oil shall not be disposed of in a municipal solid waste incinerator as defined in part 115.

(4) Beginning on July 1, 1991, a person who violates this section is guilty of a misdemeanor punishable by imprisonment for 90 days or a fine of not more than $1,000.00, or both. In place of a sentence provided in this subsection, the court may order that the defendant engage in court supervised recycling-related labor for a number of hours determined by the court, including, but not limited to, oil recycling. A violation of this section by a person, other than an individual, is punishable by a fine of not more than $2,500.00.

(5) This section does not prohibit enforcement actions under other state or federal laws applicable to an activity described in this section.

(6) The department shall establish criteria to be used in designating collection facilities under subsection (1). In developing the criteria, the department shall encourage private and local collection facilities as an integral part of the department's efforts to establish a statewide network of collection facilities as required in section 16705(a).

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.16705 Comprehensive plan.

Sec. 16705. In addition to the other powers and duties of the department under this part, by January 1, 1991, the department shall develop and submit to the legislature a comprehensive plan that does all of the following:

(a) Provides for a network of private, state, and local collection facilities on a statewide basis by July 1, 1991 to facilitate compliance with section 16704.

(b) Provides for a publicity program to assure that the public is aware of the requirements of section 16704, the location of collection facilities, and the penalties for violating section 16704.

(c) Provides 1 or more proposed funding mechanisms that the department considers feasible to assure that an operational collection facility network is available statewide by July 1, 1991.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

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PART 169
SCRAP TIRES

324.16901 Definitions.

Sec. 16901. (1) As used in this part:

(a) "Abandoned scrap tires" means an accumulation of scrap tires on property where the property owner is not responsible in whole or in part for the accumulation of the scrap tires. For the purposes of this subdivision, an owner who purchased or willingly took possession of an existing scrap tire collection site shall be considered by the department to be responsible in whole or in part for the accumulation of the scrap tires.

(b) "Automotive recycler" means that term as defined in section 2a of the Michigan vehicle code, 1949 PA 300, MCL 257.2a.

(c) "Bond" means a performance bond from a surety company authorized to transact business in this state, a certificate of deposit, a cash bond, or an irrevocable letter of credit, in favor of the department.

(d) "Collection site" means, subject to subdivision (e), a site consisting of a parcel or adjacent parcels of real property where any of the following are accumulated:

(*i*) 500 or more scrap tires. This subparagraph does not apply if that property is owned or leased by and associated with the operations of a retailer or automotive recycler or a commercial contractor as described in subparagraph (*iv*).

(*ii*) 1,500 or more scrap tires if that property is owned or leased by and associated with the operations of a retailer that is not also an automotive recycler.

(*iii*) 2,500 or more scrap tires if that property is owned or leased by and associated with the operations of an automotive recycler.

(*iv*) More than 150 cubic yards of tire chips if that property is owned or leased by and associated with the operations of a commercial contractor that is authorized to use the tire chips as an aggregate replacement in a manner approved by a designation of inertness for scrap tires or is otherwise authorized for such use by the department under part 115.

(e) "Collection site" does not include a disposal area licensed under part 115, a community cleanup site, a racecourse, or a feed storage location.

(f) "Commodity" means crumb rubber, tire chips, a ring or slab cut from a tire for use as a weight, or a product die-cut or punched from a tire, or any other product that, as determined by the department based on the product's production cost and value, is not likely to result in an accumulation, at the site of production or use, that poses a threat to public health or the environment. A product is not a commodity unless it meets published national standards or specifications that the department determines are relevant to accomplishing the purposes of this part.

(g) "Commodity storage area" means 1 or more locations within a collection site where a commodity is stored.

(h) "Community cleanup site" means a site owned by a local unit of government or nonprofit organization that has received a scrap tire cleanup grant under section 16908(2)(c) and uses this site for the purpose of collecting scrap tires from residents as part of a community cleanup day or resident drop off.

(i) "Crumb rubber" means rubber material derived from tires that is less than 1/8 inch by 1/8 inch in size and is free of steel and fiber.

(j) "Department" means the department of environmental quality.

(k) "End-user" means any of the following:

(*i*) A person who possesses a permit to burn tires under part 55.

(*ii*) The owner or operator of a landfill that is authorized under the landfill's operating license to use scrap tires.

(*iii*) A person who uses a commodity to make a product that is sold in the market.

(*iv*) A person who is authorized by this part to accumulate scrap tires, who acquires scrap tires, and who converts scrap tires into a product that is sold in the market or reused in a manner authorized by this part.

(*l*) "Farm" means that term as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(m) "Farm operation" means that term as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(n) "Feed storage location" means a location on a parcel or adjacent parcels of real property containing a farm operation where not more than 3,000 scrap tires are used to secure stored feed.

(o) "Fund" means the scrap tire regulatory fund created in section 16908.

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(p) "Landfill" means a landfill as defined in section 11504 that is licensed under part 115.

(q) "Law enforcement officer" means any law enforcement officer who is trained and licensed or certified under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615, or an officer appointed by the director of the department of state police under section 6d of 1935 PA 59, MCL 28.6d.

(r) "Outdoor" or "outdoors" means in a place other than a building or covered vehicle.

(s) "Portable shredding operation" means a person who operates scrap tire shredding equipment that produces a commodity or tire shreds and that can be moved from site to site.

(t) "Racecourse" means a commercially operated track for go-carts, off-road recreational vehicles, motorcycles, or other vehicles that uses scrap tires as bumpers along the track for safety purposes and that meets 1 or more of the following requirements:

(*i*) Uses not more than 3,000 scrap tires for bumpers.

(*ii*) Is operated on a temporary basis and, between races, stores the scrap tires at a collection site bonded under section 16903 and registered under section 16904.

(u) "Retailer" means a person who sells or offers for sale new, retreaded, or remanufactured tires to consumers in this state.

(v) "Retreader" means a person who retreads, recases, or recaps tire casings for reuse.

(w) "Scrap tire" means a tire that is no longer being used for its original intended purpose including, but not limited to, a used tire, a reusable tire casing, or portions of a tire. Scrap tire does not include a vehicle support stand.

(x) "Scrap tire hauler" means a person who transports more than 10 scrap tires at once in a vehicle on a public road or street. Scrap tire hauler does not include any of the following:

(*i*) A person, other than a commercial business, who transports that person's own tires to a location authorized in section 16902(1).

(*ii*) A member of a nonprofit service organization who is participating in a community service project and is transporting scrap tires to a location authorized in section 16902(1).

(*iii*) The owner of a farm who is transporting only scrap tires that originated from his or her farm operation, to a location authorized in section 16902(1), or that are intended for use in a feed storage location.

(*iv*) A solid waste hauler that is transporting solid waste to a disposal area licensed under part 115.

(*v*) A person who is transporting only a commodity.

(*vi*) A retreader who is transporting scrap tires for the purpose of retreading, recasing, or recapping and who has the documentation required in section 16906(5).

(y) "Scrap tire processor" means either of the following:

(*i*) A person who is authorized by this part to accumulate scrap tires and is engaged in the business of buying or otherwise acquiring scrap tires and reducing their volume by shredding or otherwise facilitating recycling or resource recovery techniques for scrap tires.

(*ii*) A portable shredding operation.

(z) "Solid waste hauler" means a solid waste hauler as defined in section 11506 who transports less than 25% by weight or volume of scrap tires along with other solid waste in any truckload to a disposal area licensed under part 115.

(aa) "Storage requirements" means the requirements of section 16903(1) and, if applicable, (2).

(bb) "Tire" means a continuous solid or pneumatic rubber covering encircling the wheel of a tractor or other farm machinery or of a vehicle.

(cc) "Tire chip" means a portion of a tire that is any of the following:

(*i*) Not more than 2 inches by 2 inches in size and meets requirements for size, metal content, and cleanliness as specified in an executed contract for delivery of the material by the scrap tire processor.

(*ii*) Not more than 3/8 inch by 3/8 inch in size and sufficiently free from steel to be used in the construction and modification of sports surfaces such as golf course turf, athletic field turf, athletic tracks, hiking surfaces, livestock show arena surfaces, and playgrounds.

(*iii*) To be used in a drain field approved under a district or county sanitary code.

(*iv*) To be used as ground cover or mulch, if, in aggregate, 95% of the material is equal to or less than 3/4 inch in size in any dimension and the material contains less than 1% by weight or volume of steel and fiber.

(*v*) Approved by the department for use at a landfill as daily cover or a leachate collection system protective layer or for access road construction within a lined cell.

(dd) "Tire shred" means a portion of a tire that is not a commodity.

(ee) "Tire storage area" means a location within a collection site where tires are accumulated.

(ff) "Vehicle" means a device in, upon, or by which a person or property is or may be transported or drawn upon a highway. Vehicle does not include a device that is exclusively moved by human power or used

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exclusively upon stationary rails or tracks or a mobile home as defined in section 2 of the mobile home commission act, 1987 PA 96, MCL 125.2302.

(gg) "Vehicle support stand" means equipment used to support a stationary vehicle consisting of an inflated tire and wheel that is attached to another wheel.

(2) A reference in this part to a number of scrap tires means either of the following, or an equivalent combination thereof:

(a) That number of whole tires or reusable tire casings.

(b) A quantity of a commodity or tire shreds equivalent in weight to that number of whole tires.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 268, Imd. Eff. Jan. 8, 1996;—Am. 1997, Act 17, Imd. Eff. June 11, 1997;—Am. 2002, Act 496, Imd. Eff. July 3, 2002;—Am. 2006, Act 520, Imd. Eff. Dec. 29, 2006;—Am. 2014, Act 543, Imd. Eff. Jan. 15, 2015;—Am. 2016, Act 294, Eff. Jan. 2, 2017.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.16902 Delivery of scrap tire; limitations; removal; scope of subsection (2); presumptions.

Sec. 16902. (1) A person shall deliver a scrap tire only to, and only with the consent of the owner or operator of, 1 of the following that is in compliance with this part:

(a) A collection site registered under section 16904.

(b) A location that has legally accumulated scrap tires below the regulatory threshold for qualifying as a collection site as specified in section 16901(d).

(c) A disposal area licensed under part 115.

(d) An end-user.

(e) A scrap tire processor.

(f) A retailer.

(2) A person shall not by contract, agreement, or otherwise arrange for the removal of scrap tires except with 1 of the following:

(a) A scrap tire hauler that is registered pursuant to section 16905 and that by contract, agreement, or otherwise is obligated to deliver the scrap tires to the destination as identified under section 16905(3)(c).

(b) If the scrap tires are a commodity, a person hauling only a commodity.

(c) If the scrap tires are tire casings, a retreader hauling only tire casings.

(d) A solid waste hauler.

(3) Subsection (2) does not do any of the following:

(a) Prohibit a person from transporting his or her scrap tires to a site authorized by subsection (1).

(b) Prohibit a member of a nonprofit service organization who is participating in a community service project from transporting scrap tires to a site authorized by subsection (1).

(c) Prohibit the owner of a farm from transporting scrap tires that originated from his or her farm operation to a site authorized by subsection (1).

(d) Prohibit a solid waste hauler from transporting solid waste to a disposal area licensed under part 115.

(4) The driver of a vehicle used to transport scrap tires is presumed to be responsible for any scrap tires transported, discarded, or disposed of from the vehicle in violation of this section.

(5) In a proceeding for a violation of this section committed using a vehicle, it is presumed that the registered owner of the vehicle at the time of the violation or, if the registered owner is not an individual, the registered owner's agent was the driver of the vehicle at the time of the violation. However, if the vehicle was leased at the time of the violation, it is presumed that the lessee or, if the lessee is not an individual, the lessee's agent was the driver of the vehicle at the time of the violation.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 496, Imd. Eff. July 3, 2002;—Am. 2006, Act 521, Imd. Eff. Dec. 29, 2006;—Am. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: NREPA

324.16902a Repealed. 2002, Act 496, Imd. Eff. July 3, 2002.

Compiler's note: The repealed section pertained to retailer disposal of scrap tires and maintenance of records.

Popular name: Act 451

Popular name: NREPA

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324.16903 Accumulation of scrap tires outdoors by owner or operator of collection site; compliance; bond required; exception; drawing on bond; notice; order.

Sec. 16903. (1) A person who owns or operates a collection site where fewer than 2,500 scrap tires are accumulated outdoors shall comply with all of the following:

(a) Scrap tires shall be stored in the tire storage area identified on the scrap tire collection site registration application map and approved by the department.

(b) Only scrap tires shall be accumulated in the tire storage area.

(c) Subject to subdivision (f), the scrap tires shall be accumulated in piles no greater than 15 feet in height with horizontal dimensions no greater than 200 by 40 feet.

(d) Subject to subdivision (f), the scrap tires shall not be within 20 feet of the property line or within 60 feet of a building or structure.

(e) Subject to subdivision (f), there shall be a minimum separation of 30 feet between scrap tire piles. The open space between the piles shall at all times be free of rubbish, equipment, and other materials.

(f) Scrap tire piles shall be accessible to fire fighting equipment. If the requirement of this subdivision is met, the local fire department that serves the jurisdiction in which the collection site is located may grant a variance from the requirements of subdivision (c), (d), or (e). A variance under this subsection shall be in writing.

(g) Scrap tires shall be isolated from other stored materials that may create hazardous products if there is a fire, including, but not limited to, lead acid batteries, fuel tanks, solvent barrels, and pesticide containers.

(h) Except for scrap tires that are a commodity used to create a storage pad for, or a roadway for access to, other scrap tires that are also a commodity, scrap tires shall not be placed in the open spaces between tire piles or used to construct on-site roads.

(i) The owner or operator of the collection site shall allow the local fire department that serves the jurisdiction in which the collection site is located to inspect the collection site at any reasonable time.

(j) All persons employed to work at the collection site shall be trained in emergency response operations. The owner or operator of the collection site shall maintain training records and shall make these records available to the local fire department that serves the jurisdiction in which the collection site is located.

(2) A person who owns or operates a collection site where at least 2,500 but fewer than 100,000 scrap tires are accumulated outdoors shall comply with all of the following:

(a) All of the requirements of subsection (1).

(b) The tire storage area shall be completely enclosed with a fence that is at least 6 feet tall with lockable gates and that is designed to prevent easy access.

(c) An earthen berm not less than 5 feet in height shall completely enclose the tire storage area except to allow for necessary ingress and egress from roadways and buildings.

(d) The collection site shall contain sufficient drainage so that water does not pool or collect on the property.

(e) The approach road to the tire storage area and on-site access roads to the tire storage area shall be of all-weather construction and maintained in good condition and free of debris and equipment so that it is passable at all times for fire fighting and other emergency vehicles. If the local fire department for the jurisdiction where the collection site is located submits to the department a written determination that the on-site access roads do not ensure that the site is accessible to emergency vehicles at all times during the year, the department of environmental quality shall consider the on-site access roads to be in violation of this requirement.

(f) Tire storage areas shall be mowed regularly or otherwise kept free of weeds, vegetation, and other growth at all times.

(g) An emergency procedures plan shall be prepared and displayed at the collection site. The plan shall include telephone numbers of the local fire and police departments. The plan shall be reviewed by the local fire department prior to being posted.

(h) Scrap tires shall not be accumulated in excess of 10,000 cubic yards of scrap tires per acre.

(3) A person who owns or operates a collection site where 100,000 or more scrap tires are accumulated outdoors shall comply with all of the requirements of subsections (1) and (2) and shall operate as a scrap tire processor.

(4) Except as otherwise provided in this subsection, subsection (6), and section 16903b, a person who owns a collection site shall maintain a bond in favor of the department. If the collection site registration application under section 16904 includes a written agreement between the owner and the operator of the collection site that requires the operator to maintain the bond and the department approves that requirement, then the operator shall maintain the bond. The bond shall be on a form approved by the department. If the

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operator is required to maintain the bond under this subsection but fails to do so, both the owner and operator are responsible for a violation of this subsection. The amount of the bond shall be not less than the sum of $25,000.00 per quarter acre, or fraction thereof, of outdoor tire storage area, and $2.00 per square foot of tire storage area in a building. However, for collection sites with fewer than 2,500 tires, the bond shall not exceed $2,500.00.

(5) A person who elects to use a certificate of deposit as a bond under subsection (4) shall receive any accrued interest on that certificate of deposit upon release of the bond by the department. If a person elects to post cash as a bond, interest shall accrue on that bond quarterly at the annual rate of 6%, except that the interest rate payable to the person who maintained the bond shall not exceed the rate of interest accrued on the state common cash fund for the quarter in which an accrual is determined. Interest shall be paid to the person who maintained the bond upon release of the bond by the department. Any interest greater than 6% shall be deposited into the fund.

(6) A bond is not required under subsection (4) for a commodity storage area that meets all of the following requirements:

(a) The commodity is stored in accordance with the requirements of subsection (1).

(b) Not less than 75% of the commodity, by weight or volume, that is stored at the collection site each calendar year is removed from the collection site to a market during that year, and the collection site owner or operator certifies compliance with this subdivision on a form approved by the department.

(c) The areas of the collection site that are used for storage of the commodity are not larger than a total of 1 acre and those areas are indicated on a survey by a registered professional engineer submitted to the department as part of the collection site registration.

(7) Subject to subsections (8) and (9), the department may utilize a bond required under subsection (4) for the costs of any of the following:

(a) Removing scrap tires from the collection site.

(b) Bringing the collection site into compliance with this part.

(c) Cleanup at the collection site.

(d) Fire suppression or other costs associated with responding to a fire or other emergency at a collection site, including reimbursement to any local unit of government that incurred those costs.

(8) The department may draw on the bond required under subsection (4) if any of the following apply:

(a) There is a fire or other emergency at the collection site.

(b) The collection site owner becomes insolvent.

(c) The owner or operator of the collection site violates this part and does not cause the removal of the scrap tires as ordered by the department or a court of competent jurisdiction.

(d) The owner or operator of the collection site fails to extend or renew the bond under its terms or establish alternate financial assurance under subsection (4) at least 30 days before the expiration date or cancellation date of the bond, unless the owner or operator is exempt from the requirement to obtain a bond under section 16903b.

(9) At least 7 days before the department draws on the bond under subsection (8)(b) or (c), the department shall issue a notice or order alleging that the owner or operator of the collection site is insolvent or violated this part and shall provide an opportunity for an informal hearing. This subsection does not apply if the bond is drawn upon under subsection (8)(c) as a result of failure to cause the removal of scrap tires as ordered by a court.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1997, Act 17, Imd. Eff. June 11, 1997;—Am. 2002, Act 496, Imd. Eff. July 3, 2002;—Am. 2006, Act 522, Imd. Eff. Dec. 29, 2006;—Am. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: NREPA

324.16903a Fires at collection sites; statewide response plan.

Sec. 16903a. The department of environmental quality shall prepare and implement a statewide response plan for responding to fires at collection sites.

History: Add. 1997, Act 17, Imd. Eff. June 11, 1997.

Popular name: Act 451

Popular name: NREPA

324.16903b Bond; exemptions; noncompliance; notice; compliance with subsection (1).

Sec. 16903b. (1) Subject to subsection (2), the owner and operator of a collection site are exempt from the requirement to obtain a bond under section 16903(4) if all of the following requirements are met:

(a) The owner or operator of the collection site is a scrap tire processor.

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(b) Not less than 75% of the scrap tires, by weight or volume, that are stored at the collection site each calendar year are recycled or used for resource recovery during that year.

(c) The collection site has been in compliance with storage requirements for at least 1 year.

(d) The owner or operator annually certifies compliance with the requirements of this subsection on a form approved by the department.

(2) If the department determines that the owner or operator of a collection site is not in compliance with subsection (1), the department shall deliver to the collection site owner or operator, or both, a notice of noncompliance. If, within 60 days after receipt of that notice, the owner or operator who received the notice does not bring the collection site into compliance with subsection (1), the owner or operator shall comply with section 16903(4). Once an owner or operator is required to obtain a bond under section 16903(4), the bond shall be maintained unless the owner or operator brings the collection site into compliance with subsection (1).

(3) If a scrap tire processor has maintained its collection site in compliance with subsection (1) for 5 years, the scrap tire processor may move its operation to a new collection site location and remains exempt from the requirement to maintain a bond under section 16903(4) as long as the scrap tire processor continues to comply with subsection (1).

History: Add. 2002, Act 496, Imd. Eff. July 3, 2002;—Am. 2006, Act 523, Imd. Eff. Dec. 29, 2006;—Am. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: NREPA

324.16903c Maintenance limiting mosquito breeding; requirements; violation; penalty; payment default.

Sec. 16903c. (1) The owner or operator of a collection site shall ensure that tires at a collection site are maintained in a manner that limits the potential of mosquito breeding by complying with 1 or more of the following:

(a) The tires shall be covered by plastic sheets or other impermeable barriers to prevent the accumulation of precipitation.

(b) The tires shall be chemically treated to eliminate mosquito breeding.

(c) The tires shall be baled, shredded, or chipped into pieces no larger than 4 inches by 6 inches and stored in piles that allow complete water drainage.

(2) A person who violates this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $400.00, plus costs.

(3) A default in the payment of a civil fine or costs ordered under this section or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

History: Add. 2002, Act 496, Imd. Eff. July 3, 2002;—Am. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: NREPA

324.16904 Owner or operator of collection site or portable shredding operation; application for registration; form; documentation of bonding; compliance with storage requirements; fee.

Sec. 16904. (1) By January 31 of each year, the owner or operator of a collection site or portable shredding operation shall submit an application for registration to the department. If a person who owns or operates a collection site is also a portable shredding operation, the person may submit a single application covering both. The application shall be on a form provided by the department and shall contain the information required by the department. The application for registration of a collection site shall include all of the following:

(a) Documentation that the collection site is bonded for the registration period as required by section 16903(4), if applicable.

(b) The signature of the applicant and, if the applicant is not the owner of the real property, the signature of the owner.

(2) The department shall not register a collection site unless the collection site is in compliance with the storage requirements.

(3) A $200.00 registration fee shall accompany each annual application for registration under this section. The department shall deposit money collected under this subsection into the state treasury to be credited to the

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fund.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2006, Act 527, Imd. Eff. Dec. 29, 2006;—Am. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: NREPA

324.16904a End user; exemption.

Sec. 16904a. (1) Except as provided in subsection (2), an end-user is exempt from this part for scrap tires stored on the site of the end-user if not less than 75% of the scrap tires, by weight or volume, that are stored on site each calendar year are recycled or used for resource recovery during that year, and the end-user annually certifies his or her compliance with this section on a form approved by the department.

(2) All end-users shall comply with the requirements of section 16906.

History: Add. 1997, Act 17, Imd. Eff. June 11, 1997;—Am. 2002, Act 496, Imd. Eff. July 3, 2002.

Popular name: Act 451

Popular name: NREPA

324.16904b Regulation of scrap tires as solid waste.

Sec. 16904b. Scrap tires that are managed in compliance with this part are exempt from regulation as solid waste under part 115. Scrap tires that are not managed in compliance with this part are regulated as solid waste under part 115 in addition to being regulated under this part.

History: Add. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: NREPA

324.16905 Scrap tire hauler; registration; form; contents; presentment; display of number; maintenance, availability, and contents of record; disposal at other location prohibited; original record; copy; bond; use; conditions for drawing on; notice; order.

Sec. 16905. (1) By January 31 of each year, a scrap tire hauler shall submit an application for registration to the department. The application shall be on a form provided by the department and shall contain the information required by the department. The application shall include documentation that the scrap tire hauler is bonded as required by subsection (6) for the registration period.

(2) A scrap tire hauler when transporting scrap tires shall have in his or her possession a copy of the current unexpired scrap tire hauler registration and shall present it upon demand of the department or a law enforcement officer. The scrap tire hauler registration number issued by the department shall be visibly displayed on a motor vehicle transporting scrap tires, whether the scrap tires are transported in or on the motor vehicle or a trailer. The number shall be in block style numerals at least 2 inches high and located on the driver's side of the vehicle but not on a window. The color of the numerals shall contrast with the background vehicle color.

(3) A scrap tire hauler shall maintain a record of each load or consolidated load of scrap tires he or she transports on forms approved by the department. The record shall be maintained for 3 years and shall be made available, upon request, to the department or to a law enforcement officer at reasonable hours. The record shall contain all of the following information:

(a) The name, address, telephone number, authorized signature, and registration number of the scrap tire hauler.

(b) The name, address, telephone number, and authorized signature of the person who contracts for the removal of the scrap tires.

(c) The name, address, telephone number, and, upon delivery, the authorized signature, as required under section 16906(3), of the owner or operator of the location described in section 16902(1) where the tires are to be delivered.

(d) The date of removal and the number of scrap tires being transported.

(4) A scrap tire hauler shall not dispose of scrap tires at a location other than the location identified under subsection (3)(c).

(5) The original record as required by subsection (3) shall be in the possession of the scrap tire hauler during the actual transportation of the scrap tires. A copy of the record provided for in subsection (3) shall be provided to the person who contracts for the removal of scrap tires at the time of removal of the tires from the originating location. A copy shall also be provided to the owner or operator of the location described in section 16902(1) to which the scrap tires are delivered at the time of delivery.

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(6) A scrap tire hauler shall maintain a bond in favor of the department, unless the scrap tire hauler is owned and operated by a scrap tire processor in compliance with this part. The bond shall be on a form approved by the department. The amount of the bond shall be $10,000.00.

(7) A person who elects to use a certificate of deposit as a bond under subsection (6) shall receive any accrued interest on that certificate of deposit. If cash is posted as a bond, interest shall accrue on the bond quarterly, at the annual rate of 6%, except that the interest rate payable to the scrap tire hauler shall not exceed the rate of interest accrued on the state common cash fund for the quarter in which an accrual is determined. Interest shall be paid to the scrap tire hauler upon release of the bond by the department. Any interest greater than 6% shall be deposited into the fund.

(8) Subject to subsections (9) and (10), the department may utilize a bond required under subsection (6) for the costs of any of the following:

(a) Removing scrap tires accumulated by the scrap tire hauler.

(b) Removing scrap tires deposited at an illegal location by the scrap tire hauler.

(c) Bringing scrap tires accumulated or deposited by the scrap tire hauler into compliance with this part.

(d) Cleanup of scrap tires accumulated or deposited by the scrap tire hauler.

(e) Fire suppression or other costs associated with responding to a fire or other emergency involving the scrap tire hauler or a site where scrap tires have been accumulated or deposited by the scrap tire hauler, including reimbursement to any local unit of government that incurred those costs.

(9) The department may draw on the bond required under subsection (6) if any of the following apply:

(a) There is a fire or other emergency involving the scrap tire hauler or a site where scrap tires have been accumulated or deposited by the scrap tire hauler.

(b) The scrap tire hauler becomes insolvent.

(c) The scrap tire hauler violates this part and does not cause the removal of the tires as ordered by the department or a court of competent jurisdiction.

(d) The scrap tire hauler fails to extend or renew the bond under its terms or establish alternate financial assurance under subsection (6) at least 30 days before the expiration date or cancellation date of the bond.

(10) At least 7 days before the department draws on the bond under subsection (9)(b) or (c), the department shall issue a notice or order alleging that the scrap tire hauler is insolvent or violated this part and shall provide an opportunity for an informal hearing. This subsection does not apply if the bond is drawn upon under subsection (9)(c) as a result of failure to cause the removal of scrap tires as ordered by a court.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 496, Imd. Eff. July 3, 2002;—Am. 2006, Act 527, Imd. Eff. Dec. 29, 2006;—Am. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: NREPA

324.16906 Record.

Sec. 16906. (1) A person who by contract, agreement, or otherwise arranges for the removal of scrap tires from a property under his or her control, including an end-user, shall do all of the following:

(a) If a complete record is not obtained from the registered scrap tire hauler pursuant to section 16905(5) or from an owner, operator, or authorized agent of a location pursuant to subsection (3), promptly notify the department of the missing record or information.

(b) Maintain the records described in subdivision (a) at the site of removal for 3 years.

(c) Make the records available to the department or a law enforcement officer upon request during reasonable hours.

(2) A person who receives scrap tires, including an end-user, shall maintain a record of all scrap tires received. The record shall be maintained for 3 years and shall be made available upon request to the department or a law enforcement officer at reasonable hours. The record shall contain all of the information required of a scrap tire hauler in section 16905(3).

(3) Upon acceptance of scrap tires at a location authorized by section 16902(1), the owner, operator, or authorized agent of that location shall sign the record, indicating acceptance of the scrap tires, and provide a copy of the signed record to the person delivering the scrap tires. Within 30 days, the owner or operator of the location receiving the scrap tires shall forward a copy of the signed record to the person who by contract, agreement, or otherwise arranged for the removal of the scrap tires being delivered. If the number of scrap tires received by a location authorized by section 16902(1) differs from the number of scrap tires indicated on the record provided for in section 16905(3) by the person who by contract, agreement, or otherwise arranged for the removal of the scrap tires being delivered or by the scrap tire hauler, the owner or operator of the location receiving the scrap tires shall contact the person who arranged for removal of the scrap tires or the scrap tire hauler, or both, as necessary, and determine where any additional tires received by that location

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originated or where any missing tires not received by that location were taken.

(4) If a consumer purchases replacement tires at a retailer and retains the tires being replaced, the retailer shall obtain the signature of the consumer on an invoice, receipt, or other record acknowledging retention of the scrap tires unless the consumer refuses.

(5) A retreader shall maintain for 3 years, and make available upon request to the department or a law enforcement officer at reasonable hours, all records required to be carried or maintained with the retreader's tire casings including all of the following:

(a) A retread work order that includes the customer's name, date of transaction, retreader DOT identification number pursuant to 49 CFR part 574, order number, and details of casing information for the casing intended for processing. Work orders shall reflect the number of tires that are being transported and retreaded.

(b) A work order sales report that specifies the work process detail for the customer work order. This report shall be returned to the customer with the work order number and invoice.

(c) An invoice stating the sales transaction of the retread process that was completed for the customer.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 496, Imd. Eff. July 3, 2002;—Am. 2006, Act 529, Imd. Eff. Dec. 29, 2006;—Am. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: NREPA

324.16907 Report to legislature.

Sec. 16907. By January 1, 1996, the department shall report to the legislature on all of the following:

(a) The effectiveness of this part and whether the department recommends any changes in this part.

(b) The volume of tires that are being disposed of in landfills and whether the department recommends banning tires from landfills in the future.

(c) Whether a manifest system to track scrap tires would be useful in the enforcement of this part.

(d) Whether, under certain circumstances, the fund should be used for the cleanup of abandoned scrap tires on land owned by persons other than the state or a municipality or county.

(e) Whether sufficient collection sites are available for the disposal of scrap tires from private individuals.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.16908 Scrap tire regulatory fund; creation; investment; interest and earnings; department as administrator for auditing purposes; no reversion to general fund; use of money in fund; grants.

Sec. 16908. (1) The scrap tire regulatory fund is created in the state treasury. The fund shall receive money as provided by law and any gifts or contributions to the fund. The state treasurer shall direct the investment of the fund. Interest and earnings of the fund shall be credited to the fund. The department shall be the administrator of the fund for auditing purposes. Money in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(2) Money in the fund shall be used, upon appropriation, for all of the following purposes:

(a) For administrative costs of the department associated with this part including the implementation and enforcement of this part. However, money shall not be expended under this subdivision for the employment of more than 11 full-time equated positions.

(b) For the administrative costs of the secretary of state associated with the collection of the tire disposal surcharge pursuant to section 806 of the Michigan vehicle code, 1949 PA 300, MCL 257.806.

(c) For the cleanup or collection of abandoned scrap tires and scrap tires at collection sites. The department shall give priority to funding activities under this subdivision at collection sites in which the scrap tires were accumulated prior to January 1, 1991 and to collection sites that pose an imminent threat to public health, safety, welfare, or the environment. For collection sites that have accumulated tires after January 1, 1991, a lien, in favor of the state up to the value of the cleanup grant amount and any increase in the value of the property as a result of the cleanup of the property with grant funds, shall be placed on the property that is affected by the removal of the tires as provided in section 16908b. Before making a grant under this subdivision, the department shall consider the extent to which the making of the grant would contribute to the achievement of a balanced distribution of grants under this subdivision throughout the state. If a grant is awarded under this subdivision for collecting scrap tires at a community cleanup site, the tires shall be removed from the community cleanup site by the time specified in the grant contract.

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(d) For grants to reimburse the cost of purchasing scrap tires to support the development of increased markets for scrap tires. Only the cost of purchasing scrap tires from scrap tire processors in this state or other generators of scrap tires in this state is eligible for reimbursement under this subdivision.

(e) For grants of up to 50% of the cost of purchasing equipment, or research and development, to provide for a new or increased use for scrap tires.

(f) For costs associated with enforcement of this part, including grants to local law enforcement agencies.

(3) Applications for grants under subsection (2) shall be submitted on a form approved by the department and shall contain the information required by the department. The department shall publish criteria upon which the grants will be issued and shall make that information available to grant applicants.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 268, Imd. Eff. Jan. 8, 1996;—Am. 2002, Act 496, Imd. Eff. July 3, 2002;—Am. 2006, Act 524, Imd. Eff. Dec. 29, 2006;—Am. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: NREPA

324.16908a Development of markets for scrap tires.

Sec. 16908a. The department of environmental quality shall assist owners and operators of collection sites and scrap tire processors in this state in developing markets for scrap tires.

History: Add. 1997, Act 17, Imd. Eff. June 11, 1997.

Popular name: Act 451

Popular name: NREPA

324.16908b Unpaid cleanup costs; lien; filing of petition by attorney general; type of lien; duration; release.

Sec. 16908b. (1) All unpaid cleanup costs for scrap tires accumulated after January 1, 1991 that are incurred under section 16908(2)(c), including any staff costs, costs of surveillance and enforcement, and attorney costs or fees constitute a lien in favor of this state upon a collection site that has been the subject of cleanup activity by this state. A lien under this subsection has priority over all other liens and encumbrances except liens and encumbrances recorded before the date the lien under this subsection is recorded. A lien under this subsection arises when this state first incurs such cleanup costs at the collection site.

(2) If the attorney general determines that the lien provided in subsection (1) is insufficient to protect the interest of this state in recovering the cleanup costs at a collection site, the attorney general may file a petition in the circuit court for the county in which the property is located seeking either or both of the following:

(a) A lien upon the collection site subject to the scrap tire cleanup activity that takes priority over all other liens and encumbrances that are or have been recorded on the collection site.

(b) A lien upon real or personal property or rights to real or personal property other than the collection site, owned by the person who owns the collection site, having priority over all other liens and encumbrances recorded prior to the date the lien under this subsection is recorded. However, the following are not subject to the lien provided for in this subdivision:

(*i*) Assets of a qualified pension plan or individual retirement account under the internal revenue code.

(*ii*) Assets held expressly for the purpose of financing a dependent's college education.

(*iii*) Up to $500,000.00 in nonbusiness real or personal property or rights to real or personal property, except that not more than $25,000.00 of this amount may be cash or securities.

(3) A petition submitted pursuant to subsection (2) shall set forth with as much specificity as possible the type of lien sought, the property that would be affected, and the reasons the attorney general believes the lien is necessary. Upon receipt of a petition under subsection (2), the court shall promptly schedule a hearing to determine whether the petition should be granted. Notice of the hearing shall be provided to the attorney general, the property owner, and any persons holding liens or perfected security interests in the real property subject to the cleanup activity.

(4) In addition to the lien provided in subsections (1) and (2), if this state incurs costs for cleanup activity under section 16908(2)(c) that increase the market value of the real property that is the location of the cleanup activity, the increase in value caused by the state-funded cleanup activity, to the extent this state incurred unpaid cleanup costs, constitutes a lien in favor of the state upon the real property. This lien has priority over all other liens or encumbrances that are or have been recorded upon the property.

(5) A lien provided in subsection (1), (2), or (4) is perfected against real property when a notice of lien is filed by the department with the register of deeds in the county in which the real property is located. In addition, the department shall, at the time of the filing of the notice of lien, provide a copy of the notice of lien to the owner of that property by certified mail.

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(6) A lien under this section continues until the liability for the cleanup costs is satisfied.

(7) Upon satisfaction of the liability secured by the lien, the department shall file a notice of release of lien in the same manner as provided in subsection (5).

History: Add. 2006, Act 528, Imd. Eff. Dec. 29, 2006.

Popular name: Act 451

Popular name: NREPA

324.16908c Intentional open burning of scrap tire prohibited.

Sec. 16908c. A person shall not intentionally engage in the open burning of a scrap tire.

History: Add. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

324.16909 Violation as misdemeanor; penalties; separate violations; issuance of appearance ticket; section inapplicable to violation of MCL 324.16903c; false statement.

Sec. 16909. (1) A person who violates this part, if fewer than 50 scrap tires are involved, is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $200.00 or more than $500.00, or both, for each violation.

(2) A person who violates this part, if 50 or more scrap tires are involved, is guilty of a misdemeanor punishable by imprisonment for not more than 180 days or a fine of not less than $500.00 or more than $10,000.00, or both, for each violation.

(3) A person convicted of a second or subsequent violation of this part is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not less than $1,000.00 or more than $25,000.00, or both, for each violation.

(4) In addition to any other penalty provided for in this section, the court may order a person who violates this part to perform not more than 100 hours of community service.

(5) For any violation of this part, each day that a violation continues constitutes a separate violation.

(6) A law enforcement officer may issue an appearance ticket as described and authorized by sections 9c to 9g of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.9c to 764.9g, to a person who violates this part.

(7) This section does not apply to a violation of section 16903c.

(8) A person who knowingly makes or causes to be made a false statement or entry in a registration application, scrap tire transportation record, or grant application under this part is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not less than $2,500.00 or more than $10,000.00, or both.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 496, Imd. Eff. July 3, 2002;—Am. 2006, Act 520, Imd. Eff. Dec. 29, 2006;—Am. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: NREPA

324.16909a Investigation or inspection; warrantless search; seizure of vehicle or equipment; costs.

Sec. 16909a. (1) The department may enter at reasonable hours a tire retail establishment, vehicle owned or operated by a scrap tire hauler for the transport of scrap tires, or collection site or other place where scrap tires are or have been present, and may inspect the location or other place for the purposes of enforcing or administering this part. An investigation or inspection under this part shall comply with the United States constitution and the state constitution of 1963.

(2) If the department or a law enforcement officer has probable cause to believe that a person is violating this part, the department or a law enforcement officer may search without a warrant a vehicle or other transportation-related equipment that is possessed, used, or operated by that person.

(3) A vehicle, or other transportation-related equipment used in a criminal violation of this part is subject to seizure by a law enforcement officer and forfeiture in the same manner as provided in chapter 47 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709.

(4) The court may award court costs and other expenses of litigation including attorney fees to a party who successfully brings an action for a violation of this section.

History: Add. 2006, Act 530, Imd. Eff. Dec. 29, 2006;—Am. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: NREPA

324.16910 Response to fire or violation of part; action for recovery of incurred costs.

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Sec. 16910. A person who incurs costs as a result of a response to a fire or a violation of this part at a collection site may bring an action against the owner or operator of the collection site, in the circuit court in which the collection site is located, to recover the incurred costs.

History: Add. 1997, Act 17, Imd. Eff. June 11, 1997.

Popular name: Act 451

Popular name: NREPA

324.16911 Reports; appointment of scrap tire advisory committee.

Sec. 16911. (1) The department shall annually report to the standing committees of the senate and house of representatives with primary responsibility for issues pertaining to natural resources and the environment on the utilization of revenues of the fund.

(2) In 2006 and every third year thereafter, the department shall prepare a report on the effectiveness of this part in encouraging the reuse of scrap tires and ensuring the safe storage of scrap tires. The report shall include recommendations for such changes to this part, including any further description of the uses of money described in section 16908(2)(c), (d), and (e) as the department finds necessary and appropriate. The department shall submit the report to the standing committees of the senate and house of representatives with primary responsibility for issues pertaining to natural resources and the environment.

(3) The director of the department shall appoint a scrap tire advisory committee of individuals interested in the management of scrap tires to advise the department on the implementation of this part. In addition to such other issues as the department may request the committee to consider, the committee shall advise the department on the report required by subsection (2) and the relevance of a national standard or specification under section 16901(1)(f).

History: Add. 2006, Act 525, Imd. Eff. Dec. 29, 2006;—Am. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: NREPA

PART 171
BATTERY DISPOSAL

324.17101 Definitions.

Sec. 17101. As used in this part:

(a) “Alkaline manganese battery” means a dry cell battery containing manganese dioxide and zinc electrodes and an alkaline electrolyte.

(b) “Distributor” means a person who sells batteries to retailers in this state.

(c) “Lead acid battery” means a storage battery, that is used to start an internal combustion engine or as the principal electrical power source for a vehicle, in which the electrodes are grids of lead containing lead oxides that change in composition during charging and discharging, and the electrolyte is dilute sulfuric acid.

(d) “Manufacturer” means a person who produces batteries for sale in this state.

(e) “Mercuric oxide battery” means a dry cell battery that delivers an essentially constant output voltage throughout its useful life by means of a chemical reaction between zinc and mercuric oxide.

(f) “Nickel cadmium battery” means a sealed storage battery that has a nickel anode, a cadmium cathode, and an alkaline electrolyte, that is widely used in cordless appliances.

(g) “Retailer” means a person who sells or offers to sell batteries to consumers within this state.

(h) “Solid waste disposal area” means a disposal area as defined in part 115.

(i) “Zinc carbon battery” means a dry cell battery containing manganese dioxide and zinc electrodes and an electrolyte consisting of ammonium chloride or a zinc chloride solution, or both.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 124, Imd. Eff. June 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.17102 Disposal of lead acid battery.

Sec. 17102. (1) A person other than a retailer, distributor, or manufacturer shall not dispose of a lead acid battery except by delivery to 1 of the following:

(a) A retailer.

(b) A distributor.

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(c) A manufacturer.

(d) A collection, recycling, or smelting facility approved by the department.

(2) A retailer shall not dispose of used lead acid batteries except by delivery to 1 of the following:

(a) A distributor or his or her authorized agent.

(b) A collection, recycling, or smelting facility approved by the department.

(c) A manufacturer.

(3) A distributor shall dispose of lead acid batteries by delivery to a manufacturer or to a collection, recycling, or smelting facility approved by the department.

(4) A manufacturer shall dispose of lead acid batteries by delivery to a recycling or smelting facility approved by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.17103 Retailer of lead acid batteries; duties.

Sec. 17103. A retailer of lead acid batteries shall do all of the following:

(a) Accept, at or near the point at which lead acid batteries are offered for sale, in a quantity at least equal to the number of new lead acid batteries sold by the retailer, used lead acid batteries from customers, if offered by the customers.

(b) Post a written notice in a location that is readily visible to customers within the retail establishment that is at least 8-1/2 inches by 11 inches in size and contains the universal recycling symbol and contains essentially all of the following:

(*i*) Recycle your used lead acid batteries.

(*ii*) It is illegal to discard a lead acid battery except by delivery to a retailer, a distributor, a manufacturer, or a collection, recycling, or smelting facility approved by the department.

(*iii*) State law requires retailers to accept used lead acid batteries upon the purchase or within 30 calendar days of the purchase of a lead acid battery.

(c) The format, design, and wording of the notice described in this section shall be provided to retailers of lead acid batteries by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 124, Imd. Eff. June 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.17104 Notices; failure to post; default in payment of civil fine.

Sec. 17104. (1) The department shall produce, print, and make available to retailers notices required by section 17103.

(2) A retailer who fails to post a notice required by this part following warning by the department is subject to a civil fine of $25.00 per day of violation.

(3) A default in the payment of a civil fine ordered under this part may be remedied by any means authorized under the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.101 to 600.9947 of the Michigan Compiled Laws.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.17105 Acceptance of lead acid batteries by distributor; quantity; removal from point of collection.

Sec. 17105. (1) A distributor shall accept used lead acid batteries from retailers in a quantity at least equal to the number of new lead acid batteries sold by the distributor.

(2) A distributor accepting lead acid batteries from a retailer as required under this section shall remove the lead acid batteries from the point of collection within 90 days of receiving the batteries.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.17105a Batteries containing intentionally introduced mercury; sales or offers prohibited.

Sec. 17105a. (1) Except for alkaline manganese button cell batteries that have a mercury content of 25

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milligrams or less, a person shall not sell, offer for sale, or offer for promotional purposes an alkaline manganese battery manufactured on or after January 1, 1996 that contains intentionally introduced mercury.

(2) A person shall not sell, offer for sale, or offer for promotional purposes a zinc carbon battery manufactured on or after January 1, 1996 that contains intentionally introduced mercury.

History: Add. 1995, Act 124, Imd. Eff. June 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.17105b Button cell mercuric oxide battery or mercuric oxide battery; sales or offers.

Sec. 17105b. (1) Beginning on January 1, 1996, a person shall not sell, offer for sale, or offer for promotional purposes a button cell mercuric oxide battery for use in this state.

(2) Beginning on January 1, 1996, a person shall not sell, offer for sale, or offer for promotional purposes a mercuric oxide battery for use in this state unless the manufacturer does all of the following:

(a) Identifies a collection site that has all required government approvals, to which a person may send used mercuric oxide batteries for recycling or proper disposal after mercury is recovered from the battery.

(b) Informs each of its purchasers of mercuric oxide batteries of the collection site identified under subdivision (a).

(c) Informs each of its purchasers of mercuric oxide batteries of a telephone number that the purchaser may call to get information about returning mercuric oxide batteries for recycling or proper disposal.

(3) Subsection (2) does not apply to mercuric oxide button cell batteries.

History: Add. 1995, Act 124, Imd. Eff. June 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.17105c Nickel cadmium batteries; voluntary collection program.

Sec. 17105c. A manufacturer that participates in a voluntary collection program for nickel cadmium batteries in this state shall provide to retailers of nickel cadmium batteries that participate in the voluntary collection program a written notice to be displayed on a voluntary basis informing consumers that nickel cadmium batteries, whether sold separately or in rechargeable products, must be recycled or disposed of properly.

History: Add. 1995, Act 124, Imd. Eff. June 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.17106, 324.17106a Repealed. 1995, Act 124, Imd. Eff. June 30, 1995.

Compiler's note: The repealed sections pertained to exchange or purchase of lead acid, nickel cadmium, or mercury batteries.

Popular name: Act 451

Popular name: NREPA

324.17107 Enforcement; violation as misdemeanor; penalties.

Sec. 17107. (1) The department shall enforce this part.

(2) A person other than a retailer, distributor, or manufacturer who knowingly disposes of lead acid batteries or mercuric oxide batteries in violation of this part is guilty of a misdemeanor punishable by a fine of not more than $25.00, plus the costs of prosecution. Each battery that is unlawfully disposed of is a separate violation.

(3) Except as otherwise provided in this part, a retailer, manufacturer, or distributor who violates this part is guilty of a misdemeanor punishable by imprisonment for not more than 60 days or a fine of not more than $1,000.00, or both, plus the costs of prosecution.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 124, Imd. Eff. June 30, 1995.

Popular name: Act 451

Popular name: NREPA

PART 172.
MERCURY-ADDED PRODUCTS

324.17201 Definitions.

Sec. 17201. As used in this part:

(a) "Appliance" means a refrigerator, dehumidifier, freezer, oven, range, microwave oven, washer, dryer,

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dishwasher, trash compactor, window room air conditioner, television, or computer. Appliance does not include a home heating or central air-conditioning system.

(b) "Manufacturer" means a person that produces, imports, or distributes mercury thermometers in this state.

(c) "Mercury fever thermometer" means a mercury thermometer used for measuring body temperature.

(d) "Mercury thermometer" means a product or component, other than a dry cell battery, of a product used for measuring temperature that contains mercury or a mercury compound intentionally added to the product or component. Mercury thermometer does not include a product or component of a product that is used as a replacement for an existing thermometer that measures temperature as part of a manufacturing process.

(e) "Thermostat" means a consumer product that uses a switch that contains mercury or a mercury compound to sense and control room temperature, including room temperature in residential, commercial, industrial, and other buildings, by communicating with heating, ventilating, or air-conditioning equipment. Thermostat does not include a product used to control temperature as part of a manufacturing device.

History: Add. 2002, Act 578, Imd. Eff. Oct. 3, 2002;—Am. 2006, Act 494, Imd. Eff. Dec. 29, 2006.

Popular name: Act 451

Popular name: NREPA

324.17202 Mercury thermometer; sale, offer for sale, or offer for promotional purposes.

Sec. 17202. (1) Except as provided in subsection (2), beginning on January 1, 2003, a person shall not sell, offer for sale, or offer for promotional purposes a mercury thermometer in this state or for use in this state. This subsection does not apply if the mercury thermometer is sold or offered for either of the following:

(a) A use for which a mercury thermometer is required by state or federal statute, regulation, or administrative rule.

(b) Pharmaceutical research purposes.

(2) Beginning on January 1, 2003, a person shall not sell, offer for sale, or offer for promotional purposes a mercury fever thermometer in this state or for use in this state, except by prescription. A manufacturer of mercury fever thermometers shall supply clear instructions on the careful handling of the thermometer to avoid breakage and proper cleanup should a breakage occur with each mercury fever thermometer sold by prescription.

History: Add. 2002, Act 578, Imd. Eff. Oct. 3, 2002.

Popular name: Act 451

Popular name: NREPA

324.17203 Enforcement; violation as misdemeanor; penalty.

Sec. 17203. (1) The department of environmental quality shall enforce this part.

(2) A person who violates this part is guilty of a misdemeanor punishable by imprisonment for not more than 60 days or a fine of not more than $1,000.00, or both, plus the costs of prosecution.

History: Add. 2002, Act 578, Imd. Eff. Oct. 3, 2002.

Popular name: Act 451

Popular name: NREPA

324.17204 Sale of blood pressure device containing mercury; prohibitions; exceptions.

Sec. 17204. (1) Beginning January 1, 2008, a person shall not sell, offer for sale, or offer for promotional purposes in this state or for use in this state a blood pressure recording, measuring, or monitoring device that contains mercury or a mercury compound intentionally added to the device.

(2) Except as provided in subsection (3), beginning January 1, 2009, a person shall not use a device described in subsection (1) in this state.

(3) Subsection (2) does not apply to a blood pressure recording, measuring, or monitoring device that contains mercury or a mercury-added compound if all of the following requirements are met:

(a) The blood pressure recording, measuring, or monitoring device was purchased prior to the date of enactment of the amendatory act that added this section.

(b) The blood pressure recording, measuring, or monitoring device is used exclusively in a private residence or is used exclusively in a health care facility for the purpose of calibrating blood pressure recording, measuring, or monitoring devices that do not contain mercury or a mercury-added compound and is kept in a locked area within that health care facility that is inaccessible to the general public.

History: Add. 2006, Act 493, Imd. Eff. Dec. 29, 2006.

Popular name: Act 451

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Popular name: NREPA

324.17205 Thermostat containing mercury or mercury compound; sale or distribution prohibited; exception.

Sec. 17205. (1) Beginning January 1, 2009, a person shall not sell, offer for sale, or distribute in this state or for use in this state a thermostat for use in regulating room temperature and that contains mercury or a mercury compound.

(2) This section does not apply to a thermostat if the thermostat is a replacement for an existing thermostat containing mercury or a mercury compound that is a component of an appliance.

History: Add. 2006, Act 492, Imd. Eff. Dec. 29, 2006.

Compiler's note: Act 451

Popular name: NREPA

324.17206 Esophageal dilator, bougie tube, or gastrointestinal tube with mercury or mercury compound added; sale, offer for sale, or distribution prohibited; exceptions.

Sec. 17206. (1) Except as provided in subsection (2), beginning January 1, 2009, a person shall not sell, offer for sale, or distribute in this state an esophageal dilator, bougie tube, or gastrointestinal tube if mercury or a mercury compound was added to the product during its manufacture.

(2) This section does not apply to either of the following:

(a) A product the use of which is required by a federal statute or regulation.

(b) A product whose only mercury-containing component is a button cell battery.

History: Add. 2006, Act 494, Imd. Eff. Dec. 29, 2006.

Popular name: Act 451

Popular name: NREPA

PART 173
ELECTRONICS

324.17301 Definitions.

Sec. 17301. As used in this part:

(a) "Collector" means a person who receives covered electronic devices from consumers and arranges for the delivery of the covered electronic devices to a recycler.

(b) "Computer" means a desktop personal computer or laptop computer, a computer monitor, or beginning April 1, 2011, a printer. Computer does not include any of the following:

(*i*) A personal digital assistant device or mobile telephone.

(*ii*) A computer peripheral device, including a mouse or other similar pointing device, or a detachable or wireless keyboard.

(c) "Computer takeback program" means a program required under section 17305(c).

(d) "Consumer" means a person who used a covered electronic device primarily for personal or small business purposes in this state.

(e) "Covered computer" means a computer that was or will be used primarily for personal or small business purposes in this state. Covered computer does not include a device that is functionally or physically a part of, or connected to, or integrated within a larger piece of equipment or system designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting, including, but not limited to, diagnostic, monitoring, or control products, medical products approved under the federal food, drug, and cosmetic act, 21 USC 301 to 399, equipment used for security, sensing, monitoring, antiterrorism, or emergency services purposes, or equipment designed and intended primarily for use by professional users.

(f) "Covered electronic device" means a covered computer or covered video display device.

(g) "Covered video display device" means a video display device that was or will be used primarily for personal or small business purposes in this state. Covered video display device does not include a device that is functionally or physically a part of, or connected to, or integrated within a larger piece of equipment or system designed and intended for transportation or use in an industrial, governmental, commercial, research and development, or medical setting, including, but not limited to, diagnostic, monitoring, or control products, medical products approved under the federal food, drug, and cosmetic act, 21 USC 301 to 399, equipment used for security, sensing, monitoring, antiterrorism, or emergency services purposes, or equipment designed and intended primarily for use by professional users.

(h) "Department" means the department of environmental quality.

(i) "Electronic device takeback program" or "takeback program" means a computer takeback program or a

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video display device takeback program.

(j) "Manufacturer", subject to subdivision (k), means any of the following:

(*i*) The person who owns the brand with which a covered computer is labeled.

(*ii*) The person who owns or is licensed to use the brand with which a covered video display device is labeled.

(*iii*) If the brand owner does not do business in the United States, the person on whose account a covered electronic device was imported into the United States.

(*iv*) A person who contractually assumes the responsibilities and obligations of a person described under subparagraph (*i*), (*ii*), or (*iii*).

(k) Manufacturer does not include a person unless the person manufactured, sold, or imported more than 50 covered computers in 2000 or any subsequent calendar year or more than 50 covered video display devices in the previous calendar year.

(*l*) "Printer" means a printer or a multifunction or "all-in-one" device that in addition to printing performs 1 or more other operations such as copying, scanning, or faxing, that is designed to be placed on a desk or other work surface, and that may use any of various print technologies, such as laser and LED (electrographic), ink jet, dot matrix, thermal, or digital sublimation. Printer does not include a floor-standing printer, a printer with an optional floor stand, a point of sale (POS) receipt printer, a household printer such as a calculator with printing capabilities or a label maker, or a non-stand-alone printer that is embedded into a product other than a covered computer.

(m) "Recycler" means a person who as a principal component of business operations acquires covered electronic devices and sorts and processes the covered electronic devices to facilitate recycling or resource recovery techniques. Recycler does not include a collector, hauler, or electronics shop.

(n) "Retailer" means a person that sells a covered electronic device to a consumer by any means, including transactions conducted through sales outlets, catalogs, mail order, or the internet, whether or not the person has a physical presence in this state.

(o) "Small business" means a business with 10 or fewer employees.

(p) "Video display device" means an electronic device with a viewable screen of 4 inches or larger that contains a tuner that locks on to a selected carrier frequency and is capable of receiving and displaying television or video programming via broadcast, cable, or satellite. Video display device includes, but is not limited to, a direct view or projection television whose display technology is based on cathode ray tube (CRT), plasma, liquid crystal (LCD), digital light processing (DLP), liquid crystal on silicon (LCOS), silicon crystal reflective display (SXRD), light emitting diode (LED), or similar technology.

(q) "Video display device takeback program" means a program required under section 17305(d).

History: Add. 2008, Act 394, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

324.17303 Sale or offer of sale of new covered electronic device; registration by manufacturer; expiration; contents; effectiveness; failure to comply with requirements or rules; notice of deficiency; denial or revocation of registration; hearing; validity; fee; deposit of revenues; list of registered manufacturers; maintenance of website; report.

Sec. 17303. (1) By 30 days after the end of each state fiscal year, a manufacturer that sells or offers for sale to any person in this state a new covered electronic device shall register with the department on a form provided by the department. The registration expires 30 days after the end of the following state fiscal year. A manufacturer who has not already filed a registration under this part shall submit a registration within 10 business days after the manufacturer begins to sell or offer for sale new covered electronic devices in this state.

(2) A registration under subsection (1) shall include all of the following:

(a) The manufacturer's name, address, and telephone number.

(b) Each brand name under which the manufacturer sells or offers for sale covered electronic devices in this state.

(c) Information about the manufacturer's electronic device takeback program, including all of the following:

(*i*) Information provided to consumers on how and where to return covered electronic devices labeled with the manufacturer's name or brand label.

(*ii*) The means by which information described in subparagraph (*i*) is disseminated to consumers, including the relevant website address if the internet is used.

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(*iii*) Beginning with the first registration submitted after the implementation of the takeback program, a report on the implementation of the takeback program during the prior state fiscal year, including all of the following:

(A) The total weight of the covered electronic devices received by the takeback program from consumers during the prior state fiscal year.

(B) The processes and methods used to recycle or reuse the covered electronic devices received from consumers.

(C) The identity of any collector or recycler with whom the manufacturer contracts for the collection or recycling of covered electronic devices received from consumers. The identity of a recycler shall include the addresses of that recycler's recycling facilities in this state, if any. The identity of a collector or recycler reported under this subparagraph is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed by the department unless required by court order.

(3) A registration is effective upon receipt by the department if the registration is administratively complete.

(4) If a manufacturer's registration does not meet the requirements of this section and any rules promulgated under this part, the department shall notify the manufacturer of the deficiency. If the manufacturer fails to correct the deficiency within 60 days after notice is sent by the department, the department may deny or revoke the manufacturer's registration, after providing an opportunity for a contested case hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(5) A registration is valid until October 30 of each year. A manufacturer of covered electronic devices shall update its registration within 10 business days after a change in the brands of covered electronic devices from that manufacturer sold or offered for sale in this state.

(6) Until October 1, 2019, a manufacturer's registration shall be accompanied by an annual fee of $3,000.00. However, if the amount of money in the fund on December 31 of any year is greater than $600,000.00, the department shall not collect manufacturers' registration fees for the following state fiscal year.

(7) Revenue from manufacturers' registration fees collected under this section shall be deposited in the electronic waste recycling fund created in section 17327.

(8) The department shall maintain on its website a list of registered manufacturers of computers and a list of registered manufacturers of video display devices and the website addresses at which they provide information on recycling covered electronic devices.

(9) Not later than October 1, 2011 and every 2 years after that date, the department shall submit a report to the secretary of the senate and to the clerk of the house of representatives that assesses the adequacy of the fees under this section and any departmental recommendation to modify those fees.

History: Add. 2008, Act 394, Imd. Eff. Dec. 29, 2008;—Am. 2015, Act 82, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.17305 Sale or offer of sale of new covered electronic device; manufacturer; requirements.

Sec. 17305. Beginning April 1, 2010, a manufacturer shall not sell or offer for sale to any person in this state a new covered electronic device, whether through sales outlets, catalogs, mail order, the internet, or any other means, unless all of the following requirements are met:

(a) The covered electronic device is labeled with the manufacturer's name or brand label, owned by or, in the case of a video display device, licensed for use by the manufacturer.

(b) The manufacturer's name appears on the applicable registration list maintained by the department under section 17303.

(c) If the covered electronic device is a covered computer, the manufacturer has a computer takeback program as described in section 17309.

(d) If the covered electronic device is a covered video display device, the manufacturer has a video display device takeback program as described in section 17311.

History: Add. 2008, Act 394, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

324.17307 Sale or offer of sale of new covered electronic device; retailer; appearance of manufacturer on registration list.

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Sec. 17307. A retailer shall not sell or offer for sale to any person in this state a new covered electronic device from a manufacturer, purchased by the retailer on or after April 1, 2010 unless the manufacturer appears on the applicable registration list under section 17303.

History: Add. 2008, Act 394, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

324.17309 Computer takeback program.

Sec. 17309. (1) Beginning April 1, 2010, each manufacturer of covered computers shall implement a computer takeback program that meets all of the following criteria:

(a) The manufacturer of a covered computer that has reached the end of its useful life for the consumer or the manufacturer's designee accepts from the consumer the covered computer. This part shall not be construed to impair the obligation of a contract under which a person agrees to conduct a computer takeback program on behalf of a manufacturer.

(b) A consumer is not required to pay a separate fee when the consumer returns the covered computer to the manufacturer of that covered computer or the manufacturer's designee.

(c) The collection of covered computers is reasonably convenient and available to and otherwise designed to meet the needs of consumers in this state. Examples of collection methods that alone or combined meet the convenience requirements of this subdivision include systems for a consumer to return a covered computer by 1 or more of the following means:

(*i*) Mail or common carrier shipper.

(*ii*) Deposit at a local physical collection site that is kept open and staffed on a continuing basis.

(*iii*) Deposit during periodic local collection events.

(*iv*) Deposit with a retailer.

(d) The manufacturer of a covered computer provides a consumer information on how and where to return the covered computer, including, but not limited to, collection, recycling, and reuse information on the manufacturer's publicly available website. The manufacturer may also include collection, recycling, and reuse information in the packaging for or in other materials that accompany the manufacturer's covered computers when the covered computers are sold or provide that information via a toll-free telephone number.

(e) The manufacturer recycles or arranges for the recycling of any covered computers collected under subdivision (a).

(2) A manufacturer's computer takeback program is not required to accept more than 7 covered computers from a single consumer on a single day.

(3) A manufacturer may conduct a computer takeback program alone or in conjunction with other manufacturers. A manufacturer may arrange for the collection and recycling of covered computers by another person to fulfill the manufacturer's obligations under this section.

History: Add. 2008, Act 394, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

324.17311 Video display device takeback program.

Sec. 17311. (1) Beginning April 1, 2010, each manufacturer of covered video display devices shall implement a video display device takeback program that meets all of the following criteria:

(a) A manufacturer or the manufacturer's designee accepts from a consumer any covered video display device that has reached the end of its useful life for the consumer, regardless of the type or brand of covered video display device.

(b) A consumer is not required to pay a separate fee when the consumer returns a covered video display device through the takeback program of any manufacturer of any covered video display device.

(c) The requirements of section 17309(1)(c), as applied to covered video display devices.

(d) The manufacturer provides a consumer information on how and where to return a covered video display device, including, but not limited to, collection, recycling, and reuse information on the manufacturer's publicly available website. The manufacturer may also include collection, recycling, and reuse information in the packaging for or in other materials that accompany the manufacturer's covered video display devices when the covered video display devices are sold or provide that information via a toll-free telephone number.

(e) The manufacturer recycles or arranges for the recycling of any covered video display device collected under subdivision (a). As a nonbinding target, each manufacturer required to conduct a video display device takeback program should annually recycle 60% of the total weight of covered video display devices sold by

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the manufacturer in this state during the prior state fiscal year. Sales data under this subdivision are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed by the department unless required by court order.

(2) A manufacturer's video display device takeback program is not required to accept more than 7 covered video display devices from a single consumer on a single day.

(3) A manufacturer may conduct a video display device takeback program alone or in conjunction with other manufacturers. A manufacturer may arrange for the collection and recycling of covered video display devices by another person to fulfill the manufacturer's obligations under this section.

History: Add. 2008, Act 394, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

324.17313 Electronic waste advisory council; creation; members; appointments; term; vacancy; removal; co-chairs; meeting; quorum; business conducted at public meeting; writings; compensation prohibited; report; dissolution.

Sec. 17313. (1) The electronic waste advisory council is created within the legislative branch of state government. The council shall consist of the following members:

(a) Four individuals appointed by the senate majority leader as follows:

(*i*) One individual representing covered video display device manufacturers.

(*ii*) One individual representing recyclers of covered computers or covered video display devices.

(*iii*) One individual representing a trade association of computer manufacturers and video display device manufacturers.

(*iv*) One individual who is a member of the senate.

(b) Four individuals appointed by the speaker of the house of representatives as follows:

(*i*) One individual representing covered computer manufacturers.

(*ii*) One individual representing retailers of covered computers or covered video display devices.

(*iii*) One individual representing an agency responsible for a countywide recycling program.

(*iv*) One individual who is a member of the house of representatives.

(c) Two individuals appointed by the governor as follows:

(*i*) One individual representing a statewide conservation organization.

(*ii*) One individual representing the department.

(2) The appointments to the council under subsection (1) shall be made not later than 30 days after the effective date of the amendatory act that added this section.

(3) A member of the council shall serve for the life of the council. If a vacancy occurs on the council, the vacancy shall be filled for the unexpired term in the same manner as the original appointment. The appointing official may remove a member of the council for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

(4) The council member who is a member of the senate and the council member who is a member of the house of representatives shall serve as co-chairs of the council. The first meeting of the council shall be called by the co-chairs. At the first meeting, the council shall elect from among its members any other officers that it considers necessary or appropriate. After the first meeting, the council shall meet at least quarterly, or more frequently at the call of a co-chair or if requested by 2 or more members.

(5) A majority of the members of the council constitute a quorum for the transaction of business at a meeting of the council. A majority of the members present and serving are required for official action of the council.

(6) The business that the council may perform shall be conducted at a public meeting of the council held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. A writing prepared, owned, used, in the possession of, or retained by the council in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(7) Members of the council shall serve without compensation. However, the member of the council representing the department shall serve without additional compensation.

(8) By April 1, 2012, the council shall submit a report to the governor, the department, and the standing committees of the legislature with jurisdiction over issues primarily pertaining to natural resources and the environment. The report shall evaluate the program under this part and make recommendations to improve the recycling of covered electronic devices. The report shall evaluate all of the following in light of the policies and objectives set forth in section 11514:

(a) Whether a manufacturer's market share should be used to determine the amount of video display

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devices required to be recycled annually by the manufacturer.

(b) Whether a manufacturer with a takeback program that recycles electronic waste at a higher rate than provided for in this part should be granted credits and, if so, the life of the credits, whether the credits would be transferable, and how the credit system should otherwise operate.

(c) Whether the nonbinding target for manufacturers recycling covered video display devices under section 17311 should be increased or decreased and whether the target should be made mandatory.

(d) What items should be included in a mandatory takeback program and, if new items are recommended, what the recycling rates should be for those new items.

(e) Whether and how a manufacturer should be sanctioned for failing to meet the requirements of this part.

(f) Whether funding for the administration of this part is appropriate or needs to be increased or decreased.

(g) Whether a program should be developed to recognize manufacturers that implement an expanded recycling program for additional products such as printers or recycles electronic waste at a higher rate than provided for in this part.

(h) Whether a system should be developed to collect covered electronic devices that are otherwise not collected by a manufacturer.

(i) Whether additional recycling data, such as the amount of covered electronic devices collected by collectors, should be collected and, if so, how.

(j) Whether a program should be developed and funding should be obtained for grants to expand recycling and recovery programs for covered electronic devices and to provide consumer education related to the programs.

(k) Whether a disposal ban for covered electronic devices is appropriate.

(9) The council is dissolved effective July 1, 2012.

History: Add. 2008, Act 394, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

324.17315 Recycling of covered electronic devices; manner; rules.

Sec. 17315. (1) Covered electronic devices collected under this part shall be recycled in a manner that complies with federal and state laws, including rules promulgated by the department, and local ordinances.

(2) Any rules promulgated by the department under section 17321 regulating the recycling of covered electronic devices collected under this part shall be consistent with both of the following:

(a) The United States environmental protection agency's "Plug-in to eCycling Guidelines for Materials Management", as in effect on the effective date of the amendatory act that added this section.

(b) The institute of scrap recycling industries, inc. publication "Electronics Recycling Operating Practices", dated April 25, 2006.

History: Add. 2008, Act 392, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

324.17317 Recycling of covered electronic devices; registration form; contents; report of total weight recycled previous state fiscal year; effectiveness of registration; notice of deficiency; fee; deposit of revenues; submission of false registration as violation; report.

Sec. 17317. (1) By 30 days after the end of each state fiscal year, a person who engages in the business of recycling covered electronic devices shall register with the department on a form provided by the department. The registration expires 30 days after the end of the following state fiscal year. A recycler who has not already filed a registration under this part shall submit a registration within 10 business days after the recycler begins to recycle covered electronic devices.

(2) A registration under subsection (1) shall include all of the following:

(a) The name, address, telephone number, and location of all recycling facilities under the direct control of the recycler located in this state that may receive covered electronic devices.

(b) A certification by the recycler that the recycler substantially meets the requirements of section 17315.

(3) Beginning October 30, 2010, a recycler of covered electronic devices shall report the total weight of covered electronic devices recycled during the previous state fiscal year. The recycler shall keep a written log that records the weight of covered video display devices and the total weight of covered computers delivered to the recycler and identified as such on receipt. The total weight reported in the registration shall be based on this log.

(4) A recycler's registration is effective upon receipt by the department if the registration is

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administratively complete.

(5) If a recycler's registration does not meet the requirements of this section and any rules promulgated under this part, the department shall notify the recycler of the deficiency. If the recycler fails to correct the deficiency within 60 days after notice is sent by the department, the department may deny or revoke the recycler's registration, after providing an opportunity for a contested case hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(6) Until October 1, 2019, a recycler's registration under subsection (1) shall be accompanied by an annual fee of $2,000.00.

(7) Revenue from recyclers' registration fees collected under this section shall be deposited in the electronic waste recycling fund created in section 17327.

(8) Submitting a false registration under subsection (1) is a violation of this part.

(9) Not later than October 1, 2011 and every 2 years after that date, the department shall submit a report to the secretary of the senate and to the clerk of the house of representatives that assesses the adequacy of the fees under this section and any departmental recommendation to modify those fees.

History: Add. 2008, Act 395, Imd. Eff. Dec. 29, 2008;—Am. 2015, Act 82, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.17319 Requirements.

Sec. 17319. A recycler shall comply with all of the following:

(a) Employ industry-accepted procedures substantially equivalent to those specified by the United States department of defense for the destruction or sanitization of data on hard drives and other data storage devices.

(b) Maintain a documented environmental, health, and safety management system that may be audited and is compliant with or equivalent to ISO 14001.

(c) Maintain records identifying all persons to whom the recycler provided electronic devices or materials derived from electronic devices for the purpose of conducting additional recycling and the weight and volume of material provided to each of those persons.

(d) Not use state or federal prison labor to process covered electronic devices or transact with a third party that uses or subcontracts for the use of prison labor.

History: Add. 2008, Act 395, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

324.17321 Rules for purposes of MCL 324.17303 and 324.17315.

Sec. 17321. After April 1, 2012, the department, pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, may promulgate rules for the purposes of sections 17303 and 17315.

History: Add. 2008, Act 392, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

324.17323 Management of covered electronic devices not considered disposal.

Sec. 17323. Management of covered electronic devices consistent with this part is not considered disposal for purposes of section 11538(6).

History: Add. 2008, Act 395, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

324.17325 Recycler of covered electronic devices; inspection of operations.

Sec. 17325. (1) The department shall administer and enforce this part to the extent that funds are appropriated for that purpose.

(2) The department may inspect the operations of a recycler of covered electronic devices to assess compliance with requirements of this part.

History: Add. 2008, Act 393, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

324.17327 Electronic waste recycling fund; creation; deposit of money or assets;

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investment; money at close of fiscal year; administrator of fund; expenditures.

Sec. 17327. (1) The electronic waste recycling fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department of environmental quality shall be the administrator of the fund for auditing purposes.

(5) Money from the fund shall be expended, upon appropriation, for the administrative expenses of the department in implementing this part.

History: Add. 2008, Act 394, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

324.17329 Violation; penalty; suspension or revocation of registration; deposit of fine in electronic waste recycling fund.

Sec. 17329. (1) A person who violates this part may be ordered to pay a civil fine of not more than $500.00 for the first violation or not more than $2,500.00 for a second or subsequent violation.

(2) A person who knowingly violates this part or who knowingly submits false information to the department under this part is guilty of a misdemeanor punishable by a fine of not more than $5,000.00. Each day on which a violation described in this subsection occurs represents a separate violation.

(3) After a contested case hearing, the department may suspend or revoke the registration of a recycler that violates this part a third or subsequent time. The department shall provide notice of the suspension or revocation on its website.

(4) A civil fine collected under this section shall be deposited in the electronic waste recycling fund created in section 17327.

History: Add. 2008, Act 393, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

324.17331 Loss or use of data; liability.

Sec. 17331. (1) Except to the extent otherwise provided by contract, a manufacturer, retailer, collector, or, subject to subsection (2), recycler is not liable for the loss or use of data or other information from an information storage device of a covered electronic device collected or recycled under this part.

(2) The exemption from liability for the use of data or other information under subsection (1) applies to a recycler only if the recycler complies with section 17319(a).

History: Add. 2008, Act 395, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

324.17333 Report.

Sec. 17333. If federal law establishes a national program for the collection and recycling of computer equipment, the department shall, within 90 days, submit a report to the standing committees of the senate and house of representatives with primary responsibility for recycling and solid waste issues. The report shall describe the federal program, discuss whether provisions of this part have been preempted, and recommend whether this part should be amended or repealed.

History: Add. 2008, Act 392, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

PART 175
RECYCLING REPORTING

324.17501 Definitions.

Sec. 17501. As used in this part:

(a) "Commercial waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, but does not include household waste from single residences, hazardous waste, or industrial waste. Commercial waste includes solid waste from any of the

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following:

(*i*) Multiple residences.

(*ii*) Hotels and motels.

(*iii*) Bunkhouses.

(*iv*) Ranger stations.

(*v*) Campgrounds.

(*vi*) Picnic grounds.

(*vii*) Day-use recreation areas.

(b) "Department" means the department of environmental quality.

(c) "Household waste" means any solid waste that is derived from single residences, but does not include any of the following:

(*i*) Commercial waste.

(*ii*) Industrial waste.

(*iii*) Construction and demolition waste.

(d) "Recyclable materials" means that term as it is defined in section 11505.

(e) "Recycling" means an action or process, such as separation, sorting, baling, or shipping, applied to reportable recyclable materials for the purposes of reuse or conversion into raw materials or new products.

(f) "Recycling establishment" means an establishment engaged in recycling of, or brokering of, reportable recyclable materials. Recycling establishment does not include any of the following:

(*i*) An establishment that recycles fewer than 100 tons per year.

(*ii*) A retail establishment that bales cardboard packaging for off-site shipment.

(*iii*) A retail establishment that collects returnable beverage containers under 1976 IL 1, MCL 445.571 to 445.576, for transfer to a recycling establishment.

(*iv*) An end user of reportable recyclable materials such as a paper mill, steel mill, foundry, or die caster that converts the reportable recyclable materials into new products or raw materials for conversion into new products.

(*v*) A drop-off recycling location that sends all reportable recyclable materials to a recycling establishment registered under section 17502.

(*vi*) An establishment that ships reportable recyclable material to recycling establishments registered under section 17502 but that does not engage in any other recycling.

(g) "Reportable recyclable materials", subject to subdivision (h), means any of the following categories of recyclable materials that are separated from household waste or commercial waste, or from a combination of household waste and commercial waste, and that are delivered to a recycling establishment for recycling:

(*i*) Glass.

(*ii*) Paper and paper products.

(*iii*) Plastic and plastic products.

(*iv*) Ferrous metal, including white goods.

(*v*) Nonferrous metal.

(*vi*) Textiles.

(*vii*) Single stream recyclable materials that include any combination of the materials listed in subparagraphs (*i*) to (*vi*).

(h) "Reportable recyclable materials" does not include any of the following:

(*i*) Materials or products that contain iron, steel, or nonferrous metals and that are directed to or received by a person subject to the scrap metal regulatory act, 2008 PA 429, MCL 445.421 to 445.443, or by a reuser of these metals.

(*ii*) Materials generated from the shredding or dismantling of motor vehicles or parts of motor vehicles.

(*iii*) A beneficial use by-product, as defined in section 11502.

(*iv*) A covered electronic device reported under part 173.

History: Add. 2016, Act 55, Eff. June 27, 2016.

Popular name: Act 451

Popular name: NREPA

324.17502 Recycling establishment; registration; requirements.

Sec. 17502. A recycling establishment shall annually register with the department on a form provided by the department and containing the recycling establishment's name, location, postal mailing address, electronic mail address, and telephone number and the name of the recycling establishment's contact person. The recycling establishment shall register each year by July 1. However, a recycling establishment established after the effective date of this section and after June 1 but not after December 1 shall first register not later

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than 30 days after it is established.

History: Add. 2016, Act 55, Eff. June 27, 2016.

Popular name: Act 451

Popular name: NREPA

324.17503 Recycling establishment; report.

Sec. 17503. (1) A recycling establishment in this state shall report to the department the amount of each category of reportable recyclable material received by and the amount shipped from the recycling establishment. For each state fiscal year, the recycling establishment shall, at its option, submit either an annual report or 4 quarterly reports. All of the following apply:

(a) If the recycling establishment opts to submit an annual report covering the October 1 to September 30 state fiscal year, the report shall be submitted by the following November 15.

(b) If the recycling establishment opts to submit quarterly reports, the reports shall be submitted by the following dates:

(*i*) For the October 1 to December 31 quarter, by the following February 15.

(*ii*) For the January 1 to March 31 quarter, by the following May 15.

(*iii*) For the April 1 to June 30 quarter, by the following August 15.

(*iv*) For the July 1 to September 30 quarter, by the following November 15.

(c) A report shall specify quantities of reportable recyclable materials in tons. Quantities may be determined using a volume-to-weight conversion formula provided by the department.

(d) A report may provide only aggregate quantities for multiple recycling establishments if the report identifies each recycling establishment covered by the report.

(e) A report shall be submitted in the manner provided by the department.

(f) A report shall comply with any reporting guidelines established by the department to ensure that reportable recyclable materials are not counted more than once.

(g) A report is not required to cover recycling establishment activities occurring before October 1, 2016.

(2) A person that is not a recycling establishment may voluntarily submit reports under this section.

History: Add. 2016, Act 55, Eff. June 27, 2016.

Popular name: Act 451

Popular name: NREPA

324.17504 Information; confidentiality; exemption from disclosure.

Sec. 17504. (1) Except as provided in subsection (2), information contained in a report from a recycling establishment under this part is confidential, shall not be disclosed by the department, and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(2) The department may aggregate data contained within reports submitted from recycling establishments under this part for the purpose of determining statewide quantities of reportable recyclable materials that were recycled. Subsection (1) does not apply to this aggregated data but does apply to information identifying a recycling establishment.

History: Add. 2016, Act 55, Eff. June 27, 2016.

Popular name: Act 451

Popular name: NREPA

324.17505 Website; posting; report to legislature.

Sec. 17505. (1) The department shall annually post on its website all of the following:

(a) The aggregated amount of reportable recyclable materials by category listed in section 17501(g) that were recycled during the preceding state fiscal year.

(b) The total aggregated amount of reportable recyclable materials that were recycled during the preceding state fiscal year.

(2) By January 31, 2018 and each year thereafter, the department, after consultation with interested parties, shall submit to the legislature a report on this part, including information posted under subsection (1) and any recommendations for amendments to this part.

History: Add. 2016, Act 55, Eff. June 27, 2016.

Popular name: Act 451

Popular name: NREPA

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PART 191
CLEAN MICHIGAN FUND

324.19101 Meanings of words and phrases.

Sec. 19101. For purposes of this part, the words and phrases defined in sections 19102 and 19103 have the meanings ascribed to them in those sections.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.19102 Definitions; A to N.

Sec. 19102. (1) "Approved solid waste management plan" means a solid waste management plan submitted and approved under part 115.

(2) "Capital costs" means those allowable costs, as determined by the department, of constructing or equipping, or both, a solid waste transfer facility, a recycling project, or a composting project.

(3) "Composting project" means a project in which yard wastes, including leaves and grass clippings, are converted into humus through natural biological processes.

(4) "Disposal area" means disposal area as defined in part 115.

(5) "Fund" means the clean Michigan fund created in section 19104.

(6) "Municipality" means a county, city, village, township, or an agency of a county, city, village, or township; an authority or any other public body created by or pursuant to state law; or this state or an agency or department of this state.

(7) "Nonprofit private entity" means a private entity that carries out any lawful purpose or purposes not involving pecuniary profit or gain for its directors, officers, shareholders, or members.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.19103 Definitions; P to W.

Sec. 19103. (1) "Private entity" means an individual, trust, firm, joint stock company, corporation, or association that is not a local unit of government.

(2) "Recycling project" means a project in which materials that otherwise would become solid waste are collected, separated, or processed and returned for conversion into raw materials or products.

(3) "Resource recovery" means the processing or collecting of solid wastes so as to produce materials or energy that may be used in manufacturing, agriculture, heat production, or other productive processes or purposes designed to reuse materials or products or to conserve natural resources.

(4) "Site separated material" means glass, metals, wood, paper products, plastics, rubber, textiles, or any other material approved by the department that is separated from solid waste for conversion into raw materials or new products.

(5) "Solid waste" means solid waste as defined in part 115.

(6) "Solid waste transfer facility" means a solid waste transfer facility as defined in part 115.

(7) "Source separated material" means glass, metals, wood, paper products, plastics, rubber, textiles, or any other material approved by the department that is separated at the source of generation for conversion into raw material or new products.

(8) "Waste-to-energy" means a process that is specifically designed to recover energy through the combustion or volume reduction of solid waste.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

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324.19104 Clean Michigan fund; creation; appropriations, gifts, and donations; expenditures.

Sec. 19104. The clean Michigan fund is created in the state treasury. The fund shall consist of appropriations from the general fund or any other fund, as provided by law, and any gifts and donations to the fund. The fund shall be expended only for the programs described in this part and for the staffing and administrative costs to the department of administering those programs.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.19105 Grants to counties for establishment of revolving loan fund; use of initial grant; percentage of grant utilized for administration of loan program; use of loans; establishment, duties, and membership of county loan board; conditions to making loan; annual audit; liability of county; maximum grant.

Sec. 19105. (1) The department may make a grant to a county having a population of less than 12,000 enabling the county to establish a revolving loan fund with money received from the department. The initial grant shall be used by the county to establish a revolving loan fund that shall be allocated and reallocated as provided in this section. Not more than 1% of a grant made pursuant to this section may be utilized by a county for the administration of the loan program.

(2) Grant money loaned by a county under this section shall be loaned to a private entity or nonprofit private entity only for purposes and programs that would be eligible to receive a grant under this part and may not be used for any other purpose, except administration costs.

(3) A county that receives a grant under this section shall establish a county loan board to review applications for loans submitted to the county and the board shall make recommendations to the county board of commissioners. The county loan board shall consist of a member to represent each of the following:

(a) The county.

(b) Nonprofit private entities and private entities engaged in resource recovery alternatives.

(c) Conservation or environmental organizations.

(d) The department.

(e) A member of the general public.

(4) Upon receipt of the recommendations of the county loan board, the county board of commissioners of a county that receives a grant under this section shall determine when a loan shall be made. The board of commissioners shall not make a loan unless both of the following conditions are met:

(a) The loan applicant is seeking a loan for a purpose or program that would be eligible to receive a grant under this part.

(b) The amount of the proposed loan is not more than $300,000.00.

(5) The county shall provide the department with an annual audit of the revolving loan fund using generally accepted accounting procedures.

(6) A county may be liable to the department for the full amount of a grant made pursuant to this section if at any time the county makes a loan in a manner or to an entity that is substantially out of compliance with this part.

(7) A grant to a county made under this section shall not exceed $300,000.00.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19106 Waste stream assessments.

Sec. 19106. (1) The department shall cause to be conducted a series of waste stream assessments in representative areas of the state. The assessments shall determine the characteristics of the waste stream and document seasonal fluctuations in the volume of waste.

(2) The department shall select a site for a waste stream assessment subject to the following prerequisites:

(a) The site is located in a county that has an approved solid waste management plan.

(b) The approved solid waste management plan for the county proposes some type of resource recovery.

(c) The site has not been the subject of an adequate waste stream assessment within the 5 years before the assessment authorized by this part is performed.

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(3) The department shall consider the following in determining appropriate sites for inclusion in the waste stream assessment:

(a) The extent to which the owners of the disposal areas in the proposed study site will do the following:

(*i*) Provide an area on the site for scales and for composition studies.

(*ii*) Provide temporary shelter for work during inclement weather.

(*iii*) Enlist the cooperation of solid waste haulers.

(b) The likelihood that a resource recovery project or projects will be undertaken at the proposed site.

(c) The likelihood that the data resulting from the assessment of the proposed site will be usable or useful in evaluating the waste stream in other similar areas of the state.

(d) The extent to which selection of the site contributes to the achievement of a balanced distribution of assessments throughout the state.

(e) The availability of a scale at the proposed site.

(4) The department shall not expend more than 5% of the total amount in the fund in any state fiscal year on the assessments described in this section. The department shall not expend more than $50,000.00 for any single assessment conducted under this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19107 Recycling and composting feasibility studies.

Sec. 19107. (1) The department shall cause to be conducted a series of recycling and composting feasibility studies. A study shall establish a basis upon which a decision to commit financial resources to a proposed recycling or composting project can be made. The department shall prescribe the elements to be included within a study.

(2) The department shall select a site for a recycling and composting feasibility study subject to the following prerequisites:

(a) The site is located in a county that has an approved solid waste management plan.

(b) The recycling or composting project proposed by the municipality is consistent with the approved solid waste management plan.

(3) The department shall consider the following factors in selecting a site for a recycling and composting feasibility study:

(a) The extent to which a municipality commits to proceeding with the project if the study determines that the project is feasible.

(b) The degree of demonstrated municipality, community group, or volunteer interest in undertaking a recycling or composting project.

(c) A demonstration that a recycling or composting project undertaken on the basis of the study would provide a necessary solid waste management alternative, given the status of existing disposal areas serving the location.

(d) The extent to which selection of the site contributes to the achievement of a balanced distribution of studies throughout the state.

(e) The demonstrated capability of the municipality in which the site is located to work with adjacent municipalities on alternative resource recovery projects.

(4) The department shall not expend more than 5% of the total amount in the fund in any state fiscal year on the studies described in this section. The department shall not expend more than $30,000.00 for any single study conducted under this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19108 Waste-to-energy feasibility studies.

Sec. 19108. (1) The department shall cause to be conducted a series of waste-to-energy feasibility studies. A study shall establish a basis upon which a decision to commit financial resources to a proposed waste-to-energy project can be made. The department shall prescribe the elements to be included in the study.

(2) The department shall select a site for a waste-to-energy feasibility study subject to the following prerequisites:

(a) The site is located in a county that has an approved solid waste management plan.

(b) The waste-to-energy project proposed is consistent with the approved solid waste management plan.

(3) The department shall consider the following factors in selecting a site for a waste-to-energy feasibility

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study:

(a) The extent to which the municipality proposing the project has done the following:

(*i*) Held meetings to discuss a waste-to-energy project.

(*ii*) Sought funding for studies of a waste-to-energy project.

(*iii*) Sought feasibility data on its own.

(b) The availability of letters of interest from potential energy markets.

(c) Whether a recycling feasibility study for the area to be served by the proposed waste-to-energy facility is available.

(d) Whether a waste-to-energy facility undertaken on the basis of the study would provide a necessary solid waste management alternative, given the status of existing disposal areas serving the location.

(e) The extent to which selection of the site contributes to the achievement of a balanced distribution of studies throughout the state.

(f) The demonstrated efforts of the municipality in which the site is located in working towards alternative resource recovery solutions to solid waste management problems, such as implementing recycling or composting programs in the area to be served.

(g) The demonstrated capability of the municipality in which the site is located to work with adjacent municipalities on alternative resource recovery projects.

(4) The department shall not expend more than 15% of the total amount in the fund in any state fiscal year for the studies described in this section. The department shall not expend more than $400,000.00 for any single study conducted under this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19109 Educational program with respect to resource recovery; resource recovery education grant program; authorized grants; factors in selecting recipients; limitations on expenditures.

Sec. 19109. (1) The department shall establish an educational program with respect to resource recovery to accomplish the following:

(a) To promote on a statewide basis the purchase of recycled products and materials.

(b) To develop promotional materials for distribution by municipalities in support of their resource recovery initiatives.

(2) The department shall establish a resource recovery education grant program. The program shall provide funding for the direct promotion of local resource recovery initiatives by municipalities, nonprofit private entities, and private entities. The department shall make the grants described in this subsection.

(3) The department shall not make a resource recovery education grant unless both of the following conditions are met:

(a) The proposed education project is conducted in a county that has an approved solid waste management plan.

(b) A local resource recovery project is planned or under way and the proposed education project directly promotes the use of that project.

(4) The department shall consider the following factors in selecting recipients of resource recovery education grants:

(a) Whether the education program has measurable objectives.

(b) The extent of background research completed.

(c) The type and extent of follow-up or evaluation, or both, to be conducted.

(d) The level of commitment by local officials.

(e) The extent to which the recipient commits its own financial resources to the education project.

(f) The extent to which selection of the project contributes to the achievement of a balanced distribution of grants throughout the state.

(5) The department shall not expend more than 25% of the total amount in the trust fund in any state fiscal year on the educational program and the education grant program described in this section. The department shall not expend more than $50,000.00 for any single education grant made under this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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324.19110 Solid waste transfer station grant program.

Sec. 19110. (1) The department shall establish a solid waste transfer station grant program. The program shall provide funding to municipalities, nonprofit private entities, and private entities for the cost of transfer station construction. The department shall make the grants described in this section.

(2) The department shall not make a solid waste transfer station grant unless both of the following conditions are met:

(a) The proposed transfer station is located in a county that has an approved solid waste management plan.

(b) The proposed solid waste transfer station is consistent with the approved solid waste management plans of all of the affected counties.

(3) The department shall consider the following factors in selecting recipients for solid waste transfer station grants:

(a) The potential for providing to the municipality resource recovery alternatives otherwise not available to the municipality without the proposed transfer station.

(b) The willingness of the municipality to form or participate in a joint solid waste management system with adjacent municipalities.

(c) The applicant demonstrates that the proposed transfer station replaces a sanitary landfill or open dump closed according to the standards contained in part 115.

(4) The department shall not dispense a solid waste transfer station grant unless all permits that are required by state law and that are specifically applicable to the nature of the proposed project have been obtained.

(5) The department shall not expend more than 25% of the total amount in the fund in any state fiscal year on the solid waste transfer station grant program. The department shall not expend more than $300,000.00 for any single transfer station grant made under this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19111 Recycling and composting capital grant program.

Sec. 19111. (1) The department shall establish a recycling and composting capital grant program. The program shall provide funding for the capital costs of recycling and composting programs undertaken by municipalities, nonprofit private entities, or private entities. The department shall make the grants described in this section.

(2) The department shall not make a recycling or composting capital grant unless all of the following conditions are met:

(a) The proposed recycling or composting project is located in a county that has an approved solid waste management plan.

(b) The proposed recycling or composting project is consistent with the approved solid waste management plan.

(c) The applicant provides either a feasibility study with positive results supportive of project initiation or sufficient data justifying project expansion.

(d) The equipment obtained with the grant is used for source separated materials or site separated materials, or both.

(3) The department shall consider the following factors in selecting recipients for recycling and composting capital grants:

(a) The likelihood of project success as indicated by the feasibility study results.

(b) The availability of an appropriate site.

(c) A demonstration by the applicant that the materials to be collected or processed, or both, are not being recovered presently and would not be recovered without the proposed recycling or composting project.

(d) A demonstration by the applicant that the materials to be collected or processed, or both, will be absorbed in an existing market without displacing existing resource recovery operations or that the materials, by being collected or processed, or both, will create a new market.

(e) The business and accounting plans for the proposed recycling or composting project.

(f) The need for a new or expanded recycling or composting program in the area to be served, relative to the needs of other areas.

(g) The extent to which selection of the recycling or composting program contributes to the achievement of a balanced distribution of grants throughout the state.

(h) A demonstration by the applicant that land, buildings, personnel, support services, or funds have been committed to the recycling or composting project.

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(i) The portion of the waste stream that is projected to be diverted from landfills, compared to the projected costs of the recycling or composting project.

(j) The immediacy of the reduction in waste resulting from the recycling or composting program.

(k) The potential of the recycling or composting project to be replicated in similar areas of the state.

(*l*) The availability of capacity at existing licensed landfills that serve the area to be served by the proposed recycling or composting program.

(m) The demonstrated municipality, community group, or volunteer interest in undertaking a recycling or composting project.

(n) The demonstrated capability of the applicant in working with adjacent municipalities on alternative resource recovery projects, such as development of a regional resource recovery organization, jointly sponsored resource recovery initiatives, or regional materials marketing strategies.

(4) The department shall not dispense a recycling or composting capital grant unless all the permits that are required by this part and otherwise required by state law and that are specifically applicable to the nature of the proposed project have been obtained.

(5) The department shall not expend more than 20% of the total amount in the fund in any state fiscal year on the recycling and composting capital grant program. The department shall not expend more than $500,000.00 for any single recycling or composting capital grant made under this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19112 Waste-to-energy capital grant program.

Sec. 19112. (1) The department shall establish a waste-to-energy capital grant program. The program shall provide funding for the capital costs of waste-to-energy programs undertaken by municipalities, nonprofit private entities, or private entities. The department shall make the grants described in this section.

(2) The department shall not make a waste-to-energy capital grant unless all of the following conditions are met:

(a) The proposed waste-to-energy project is located in a county that has an approved solid waste management plan.

(b) The proposed waste-to-energy project is consistent with the approved solid waste management plan.

(c) The applicant provides either a feasibility study with positive results supportive of project initiation or sufficient data justifying project expansion.

(3) The department shall consider the following factors in selecting recipients for waste-to-energy capital grants:

(a) The likelihood of project success as indicated by the feasibility study results.

(b) The availability of an appropriate site.

(c) A demonstration by the applicant that the materials to be collected or processed, or both, are not being recovered presently.

(d) The business and accounting plans for the proposed waste-to-energy project.

(e) The need for a new or expanded waste-to-energy program in the area to be served, relative to the needs of other areas.

(f) The extent to which selection of the waste-to-energy program contributes to the achievement of a balanced distribution of grants throughout the state.

(g) A demonstration by the applicant that land, buildings, personnel, support services, or funds have been committed to the waste-to-energy project.

(h) The portion of the waste stream that is projected to be diverted from landfills, compared to the projected costs of the waste-to-energy project.

(i) The potential of the waste-to-energy project to be replicated in similar areas of the state.

(4) The department shall not dispense a waste-to-energy capital grant unless all the permits that are required by this part and otherwise required by state law and that are specifically applicable to the nature of the proposed project have been obtained.

(5) The department shall not expend more than 30% of the total amount in the fund in any state fiscal year on the waste-to-energy capital grant program. The department shall not expend more than $2,000,000.00 for any single waste-to-energy grant made under this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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324.19113 Recycling operational grant program.

Sec. 19113. (1) The department shall establish a recycling operational grant program. The program shall provide temporary operating subsidies to assist municipalities, nonprofit private entities, and private entities in recapturing the difference between the cost of collection, processing, and transportation and the revenues generated from the sale of the recovered materials. The department shall make the grants described in this section.

(2) The department shall not make a recycling operational grant unless all of the following conditions are met:

(a) The proposed recycling project is located in a county with an approved solid waste management plan.

(b) The proposed recycling project is consistent with the approved solid waste management plan.

(c) A positive feasibility study of the proposed recycling project, or sufficient data justifying project expansion, is available.

(d) The applicant agrees to match the grant on a dollar for dollar basis.

(e) The applicant agrees to continue support for the recycling project if the project is within 10% of previous disposal costs.

(f) The applicant agrees to provide the department with an annual operation report.

(g) The need for an operating subsidy is demonstrated.

(h) The grant is used for a project handling source separated material or site separated material, or both.

(3) The department shall consider the following factors in determining whether to make a recycling operational grant:

(a) The portion of the waste stream projected to be diverted from a landfill, compared to projected costs.

(b) A demonstration by the applicant that land, buildings, personnel, support services, or funds have been committed to the recycling project.

(c) The applicant's willingness to show others the program.

(d) The potential of the recycling project to be replicated in similar areas of the state.

(e) The extent to which selection of the project contributes to the achievement of a balanced distribution of grants throughout the state.

(f) The demonstrated municipality, community group, or volunteer interest in undertaking a recycling project.

(g) The demonstrated capability of the applicant in working with adjacent municipalities on alternative resource recovery projects, such as development of a regional resource recovery organization, jointly sponsored resource recovery initiatives, or regional materials marketing strategies.

(h) The availability of capacity at existing licensed landfills that serve the area to be served by the proposed recycling project.

(i) The existence of a plan for transferring financial responsibility for the program to another funding source.

(j) The existence of sources of capital funding for the project.

(4) The department shall not dispense a recycling operational grant unless all the permits that are required by this part and otherwise required by state law and that are specifically applicable to the nature of the proposed project have been obtained.

(5) The department shall not expend more than 5% of the total amount in the fund in any state fiscal year for the recycling operational grant program. The department shall not expend more than $150,000.00 for any single recycling operational grant made under this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19114 Composting operational grant program.

Sec. 19114. (1) The department shall establish a composting operational grant program. The program shall provide temporary operating subsidies to assist municipalities, nonprofit private entities, and private entities in undertaking composting projects. The department shall make the grants described in this section.

(2) The department shall not make a composting operational grant unless all of the following conditions are met:

(a) The proposed composting project is located in a county with an approved solid waste management plan.

(b) The proposed composting project is consistent with the approved solid waste management plan.

(c) A positive feasibility study of the proposed composting project, or sufficient data justifying project

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expansion, is available.

(d) The applicant agrees to match the grant on a dollar for dollar basis.

(e) The applicant agrees to provide the department with an annual operation report.

(3) The department shall consider the following factors in determining whether to make a composting operational grant:

(a) The portion of the waste stream projected to be diverted from a landfill, compared to projected costs.

(b) A demonstration by the applicant that land, buildings, personnel, support services, or funds have been committed to the composting project.

(c) The applicant's willingness to show others the program.

(d) The potential of the composting project to be replicated in similar areas of the state.

(e) The extent to which selection of the project contributes to the achievement of a balanced distribution of grants throughout the state.

(f) The demonstrated municipality, community group, or volunteer interest in undertaking a composting project.

(g) The demonstrated capability in working with adjacent municipalities on alternative resource recovery projects, such as development of a regional resource recovery organization, jointly sponsored resource recovery initiatives, or regional materials marketing strategies.

(h) The availability of capacity at existing licensed landfills that serve the area to be served by the proposed composting project.

(i) A plan for transferring financial responsibility for the program to another funding source has been developed.

(j) The sources of capital funding for the project.

(4) The department shall not dispense a composting operational grant unless all the permits that are required by this part and otherwise required by state law and that are specifically applicable to the nature of the proposed project have been obtained.

(5) The department shall not expend more than 5% of the total amount in the fund in any state fiscal year for the composting operational grant program. The department shall not expend more than $150,000.00 for any single composting operational grant made under this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19115 Household hazardous waste disposal grant program.

Sec. 19115. (1) The department shall establish a household hazardous waste disposal grant program. The program shall assist municipalities in projects that educate citizens as to methods of household hazardous waste reduction and disposal option, promote the safe handling of household hazardous waste, or dispose of household hazardous waste at a state or federally permitted or licensed hazardous waste treatment, storage, or disposal facility. The department shall make the grants described in this section.

(2) The department shall not make a household hazardous waste disposal grant unless all of the following conditions are met:

(a) The project is not funded under a federal program.

(b) The municipality commits to contributing 20% of the total project cost in cash or in-kind services, or both.

(c) The project is completed within 1 year after receipt of the grant.

(d) The project is consistent with this part and other state law and policy.

(3) The department shall not dispense a household hazardous waste disposal grant unless all the permits that are required by this part and otherwise required by state law and that are specifically applicable to the nature of the proposed project have been obtained.

(4) The department shall not expend more than 2% of the total amount in the fund in any state fiscal year for the household hazardous waste disposal grant program. The department shall not expend more than $15,000.00 for any single household hazardous waste disposal grant made under this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19116 Statewide market development research study; market development plan; market development grant program; selection of development projects; selecting recipients of

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market development grants; permits as condition to dispensing market development grant; limitation on expenditures.

Sec. 19116. (1) The department shall cause to be conducted a statewide market development research study to assess the current markets and the potential for and the means for expansion of markets for recycled materials in this state. The department shall not expend more than 2.5% of the total amount in the fund in any state fiscal year for the market development research study. In addition, the department shall establish a market development plan based on the market development research study. The plan shall identify the barriers in attracting or expanding industries that use recycled materials and determine the appropriate methods for eliminating those barriers. The department of commerce shall serve as project coordinator for the market development study funded and administered by the department pursuant to this section.

(2) The department shall establish a market development grant program. The program shall encourage expansion of the use of recycled materials and the development of innovative technologies to use recycled materials. The department shall make a grant under the program described in this section.

(3) The department shall select development projects subject to the following prerequisites:

(a) The project is beyond the research stage and a demonstration has indicated that it is technically feasible.

(b) The recipient of the grant is a municipality, nonprofit private entity, or private entity in this state.

(c) The project shall be performed in this state.

(4) The department shall consider the following factors in selecting recipients of market development grants:

(a) The contribution that would be made by the project toward the goal of increasing the use of recycled materials.

(b) The market's need for the development of the technology or equipment.

(c) The potential impact of the technology or equipment on the cost effectiveness of using recycled materials.

(d) The potential for development of new resource recovery markets and for the generation of positive economic impacts.

(e) The potential of the project for commercial application.

(f) The stage of the development of the technology or equipment proposed to be used in the project.

(g) The environmental, economic, and social benefits to the state of the development of the technology or equipment.

(h) The future sources of capital funding for the project.

(i) The extent to which the applicant has committed land, buildings, personnel, support services, or funds to the project.

(j) The potential of the project for developing multiple markets.

(5) The department shall not dispense a market development grant unless all the permits that are required by this part and otherwise required by state law and that are specifically applicable to the nature of the proposed project have been obtained.

(6) The department shall not expend more than 25% of the total amount in the fund in any state fiscal year for the market development grant program. The department shall not expend more than $500,000.00 for any single grant made under this program.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19117 Program to perform hydrogeological monitoring studies on open and closed sanitary landfills and open dumps owned by municipalities.

Sec. 19117. (1) The department shall establish a program to perform hydrogeological monitoring studies on open and closed sanitary landfills and open dumps owned by municipalities. The program shall determine the extent of groundwater contamination associated with the sanitary landfills and open dumps and the need for remedial actions on those sites. The department shall determine which landfills and dumps owned by municipalities are to be monitored. In determining the order in which the landfills and dumps owned by municipalities are to be monitored, the department shall consider the potential threat of human exposure to environmental contamination originating from the sanitary landfill or open dump and the likelihood that hazardous waste was accepted at the landfill or dump.

(2) The department shall not expend more than 10% of the total amount in the fund in any state fiscal year for the program to perform hydrogeological monitoring studies. The department shall not expend more than $50,000.00 for any single hydrogeological monitoring study performed under this section.

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History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19118 Sanitary landfill and open dump closure or reclosure matching grant program.

Sec. 19118. (1) The department shall establish a sanitary landfill and open dump closure or reclosure matching grant program. The program shall provide up to 75% of the funding for the closure or reclosure of sanitary landfills and open dumps owned or operated by municipalities. In addition, the program shall provide up to 75% reimbursement for the closure of municipally owned sanitary landfills and open dumps or the reclosure of municipally owned sanitary landfills and open dumps that were closed after January 11, 1979, the effective date of former Act No. 641 of the Public Acts of 1978, according to the standards prescribed by that former act, which is currently part 115, but before December 4, 1986. The department shall make the grants described in this section.

(2) The department shall not make a closure or reclosure grant unless all of the following requirements are met:

(a) The sanitary landfill or open dump proposed for closure or reclosure is located in a county that has an approved solid waste management plan.

(b) The grant is for the closure of an operating sanitary landfill or open dump that is not operated according to the standards contained in part 115 and the rules promulgated under that part or the grant is for the reclosure of a closed sanitary landfill or dump that was not closed according to the standards contained in part 115 and the rules promulgated under that part.

(c) If the grant is reimbursement for the closure or reclosure of a landfill or dump, the closure or reclosure was made according to the standards of part 115 and the rules promulgated under that part.

(d) The grant shall be used only for a closure or reclosure that is a complete closure of an entire landfill or dump.

(e) The closure or reclosure will be accomplished completely within 1 year after receipt of the grant.

(3) The department shall consider the following factors in selecting recipients of closure or reclosure grants:

(a) The degree of effort demonstrated by the municipality in working toward alternative solutions to solid waste management problems.

(b) The degree of the potential threat of groundwater contamination.

(c) The likelihood that hazardous waste was accepted.

(d) The municipality's willingness to work with adjacent municipalities on alternative solutions.

(e) The municipality's commitment to refrain from operating unlicensed disposal areas in the future.

(4) The department shall not expend more than 25% of the total amount in the fund in any state fiscal year for the sanitary landfill and open dump closure or reclosure matching grant program. The department shall not expend more than $600,000.00 for any single grant made under this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19119 Project producing site separated materials; eligibility for grant.

Sec. 19119. Any project of the type for which a grant may be available under section 19111, which produces site separated materials, and for which the licenses or permits required by this part and otherwise required by law have been obtained, is eligible to receive a grant under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19120 Administration of studies, assessments, and programs; application for inclusion in study or assessment or for grant; project summary.

Sec. 19120. (1) The department shall administer the studies, assessments, and programs described in this part according to the following:

(a) Within 60 days after enactment of the general appropriations bill for the department of natural resources for a state fiscal year, the department shall issue a request for applications for inclusion in any study or assessment to be conducted that year and for receipt of any grant available during that year.

(b) The department shall not accept any applications after 60 days from the issuance of a request for applications.

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(c) Within 135 days after the advisory panel recommendations are made, the department shall complete its review of the application and recommendations and make its determinations.

(2) An application for inclusion in any study or assessment described in this part or for any grant available under this part shall be made on a form prescribed by the department. The department may require the applicant to provide any information reasonably necessary to allow the department to make the determinations required by this part.

(3) Each recipient of a grant and each participant in a study or assessment under this part shall complete and return a project summary on a form developed by the department by a date specified by the advisory panel. A recipient or participant who fails to submit a project summary as required by this section is not eligible to be a recipient or participant under this part for 5 years after the year for which the failure occurs.

(4) The project summary form developed by the department shall not exceed 1 page and shall include the following information:

(a) The name, address, and telephone number of the recipient or participant.

(b) The name of the project.

(c) The amount of money received.

(d) The county in which the project is located.

(e) A brief summary of the activities and accomplishments of the project.

(5) A completed project summary is available to the public under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19121 Reports.

Sec. 19121. (1) Not later than March 31 of each year, the department shall report the following information regarding the projects financed under this part for that fiscal year to the governor, the standing committees of the senate and the house of representatives that primarily consider issues pertaining to the protection of natural resources and the environment, and the subcommittees of the house of representatives and the senate on appropriations for the department:

(a) The name, address, and telephone number of the recipient or participant.

(b) The nature of the project.

(c) The amount of money received.

(d) The county in which the project is located.

(2) Not later than September 30 of each year, the department shall submit to the governor and the legislature a report on the projects financed under this act during the previous fiscal year. The report shall consist of the project summaries described in section 19120, along with an introduction and conclusion.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

PART 193
ENVIRONMENTAL PROTECTION BOND AUTHORIZATION

324.19301 Bonds; authorization; limitation; purpose.

Sec. 19301. The state shall borrow a sum not to exceed $660,000,000.00 and issue the general obligation bonds of this state, pledging the full faith and credit of the state for the payment of principal and interest on the bonds, to finance environmental protection programs that would clean up sites of toxic and other environmental contamination and contribute to a regional Great Lakes protection fund, address solid waste problems, treat sewage and other water quality problems, and reuse industrial sites and preserve open space.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19302 Conditions, methods, and procedures.

Sec. 19302. Bonds shall be issued in accordance with conditions, methods, and procedures to be established by law.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

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Popular name: NREPA

324.19303 Disposition of proceeds and interest.

Sec. 19303. The proceeds of the sale of the bonds or any series of the bonds, any premium and accrued interest received on the delivery of the bonds, and any interest earned on the proceeds of the bonds shall be deposited in the state treasury and credited to the environmental protection bond fund created in part 195 and shall be disbursed from that fund only for the purposes for which the bonds have been authorized, including the expense of issuing the bonds. The proceeds of sale of the bonds or any series of the bonds, any premium and accrued interest received on the delivery of the bonds, and any interest earned on the proceeds of the bonds shall be expended for the purposes set forth in this part in a manner as provided by law.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19304 Submission of question to electors.

Sec. 19304. The question of borrowing a sum not to exceed $660,000,000.00 and the issuance of the general obligation bonds of the state for the purposes set forth in this part shall be submitted to a vote of the electors of the state qualified to vote on the question in accordance with section 15 of article IX of the state constitution of 1963, at the general election following September 9, 1988, the effective date of former Act No. 326 of the Public Acts of 1988. The question submitted to the electors shall be substantially as follows:

"Shall the state of Michigan borrow a sum not to exceed $660,000,000.00 and issue general obligation bonds of the state, pledging the full faith and credit of the state for the payment of principal and interest on the bonds, to finance environmental protection programs that would clean up sites of toxic and other environmental contamination and contribute to a regional Great Lakes protection fund, address solid waste problems, treat sewage and other water quality problems, and reuse industrial sites and preserve open space, the method of repayment of the bonds to be from the general fund of this state?

Yes.....

No..... .".

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19305 Duties of secretary of state.

Sec. 19305. The secretary of state shall perform all acts necessary to properly submit the question prescribed by section 19304 to the electors of this state qualified to vote on the question at the general November election following September 9, 1988, the effective date of former Act No. 326 of the Public Acts of 1988.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19306 Appropriation; purpose.

Sec. 19306. (1) After the issuance of the bonds authorized by this part or former Act No. 326 of the Public Acts of 1988, there shall be appropriated from the general fund of the state each fiscal year a sufficient amount to pay promptly, when due, the principal of and interest on all outstanding bonds authorized by this part or former Act No. 326 of the Public Acts of 1988 and the costs incidental to the payment of the bonds.

(2) The governor shall include the appropriation provided in subsection (1) in his or her annual executive budget recommendations to the legislature.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 195
ENVIRONMENTAL PROTECTION BOND IMPLEMENTATION

324.19501 Definitions.

Sec. 19501. As used in this part:

(a) "Bonds" means the bonds issued under part 193 or former Act No. 326 of the Public Acts of 1988.

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(b) “Fund” means the environmental protection bond fund created in section 19506.

(c) “Local unit of government” means a county, city, village, or township, or an agency of a county, city, village, or township; an authority or any other public body created by or pursuant to state law; or this state or an agency or department of this state.

(d) “Private entity” means an individual, trust, firm, partnership, corporation, or association, whether profit or nonprofit, that is not a local unit of government.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19502 Legislative finding and declaration.

Sec. 19502. The legislature finds and declares that the environmental protection programs implemented under former Act No. 328 of the Public Acts of 1988 or this part are a public purpose and of paramount public concern in the interest of the health, safety, and general welfare of the citizens of this state.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19503 Bonds; requirements generally.

Sec. 19503. (1) The bonds issued under former Act No. 326 of the Public Acts of 1988 or part 193 shall be issued in 1 or more series, each series to be in a principal amount, to be dated, to have the maturities which may be either serial, term, or term and serial, to bear interest at a rate or rates, to be subject or not subject to prior redemption, and if subject to prior redemption with or without call premiums, to be payable at a place or places, to have or not have provisions for registration as to principal only or as to both principal and interest, to be in a form and to be executed in a manner as shall be determined by resolution to be adopted by the state administrative board and subject to or granting those covenants, directions, restrictions, or rights specified by resolution to be adopted by the state administrative board as necessary to insure the marketability, insurability, or tax exempt status. The state administrative board shall rotate the services of legal counsel when issuing bonds.

(2) The state administrative board may refund bonds issued under this part by the issuance of new bonds, whether or not the bonds to be refunded have matured or are subject to prior redemption. The state administrative board may issue bonds partly to refund bonds issued under this part and partly for any other purpose provided by this part. The principal amount of any refunding bonds issued pursuant to this section shall not be counted against the limitation on principal amount imposed by the vote of the people on November 8, 1988. Further, refunding bonds issued pursuant to this section shall not be subject to the restrictions of section 19507.

(3) The state administrative board may authorize and approve insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds, and any other transaction to provide security to assure timely payment or purchase of any bond issued under this part.

(4) The state administrative board may authorize the state treasurer, but only within limitations that are contained in the authorizing resolution of the board, to do 1 or more of the following:

(a) Sell and deliver and receive payment for the bonds.

(b) Deliver bonds partly to refund bonds and partly for other authorized purposes.

(c) Select which outstanding bonds will be refunded, if any, by the new issue of bonds.

(d) Buy bonds so issued at not more than their face value.

(e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, purchase prices, purchase dates, remarketing dates, denominations, dates of issuance, interest payment dates, redemption rights at the option of the state or the owner, the place and time of delivery and payment, and other matters and procedures necessary to complete the authorized transactions.

(f) Execute, deliver, and pay the cost of remarketing agreements, insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds or notes, and any other transaction to provide security to assure timely payments or purchase of any bond issued under this part.

(5) The bonds shall be approved by the department of treasury before their issuance but are not otherwise subject to the municipal finance act, Act No. 202 of the Public Acts of 1943, being sections 131.1 to 139.3 of the Michigan Compiled Laws.

(6) The bonds or any series of the bonds shall be sold at such price and at a publicly advertised sale or a competitively negotiated sale as determined by the state administrative board. If bonds are issued at a competitively negotiated sale, the state administrative board shall use its best efforts to include firms based in

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this state in the sale of the bonds.

(7) Except as provided in subsection (8), the bonds shall be sold in accordance with the following schedule, beginning during the first year after December 1, 1988:

(a) Not more than 34% shall be sold during the first year.

(b) Not more than 33% shall be sold during the second year.

(c) Not more than 33% shall be sold during the third year.

(d) After the third year, any remaining bonds may be sold at the discretion of the state administrative board.

(8) The state administrative board may alter the schedule for issuance of the bonds provided in subsection (7) if either or both of the following occur:

(a) Amendments to the internal revenue code of 1986 would impair the tax-exempt status of the bonds.

(b) The legislature concurs in the declaration of a toxic substance emergency made by the governor pursuant to law.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1995, Act 73, Imd. Eff. June 6, 1995.

Popular name: Act 451

Popular name: NREPA

324.19504 Bonds negotiable; tax exemption.

Sec. 19504. Bonds issued under former Act No. 326 of the Public Acts of 1988 or part 193 shall be fully negotiable under the uniform commercial code, Act No. 174 of the Public Acts of 1962, being sections 440.1101 to 440.11102 of the Michigan Compiled Laws. The bonds and the interest on the bonds shall be exempt from all taxation by the state or any political subdivisions of the state.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19505 Bonds as securities.

Sec. 19505. Bonds issued under former Act No. 326 of the Public Acts of 1988 or part 193 are made securities in which banks, savings and loan associations, investment companies, credit unions, and other persons carrying on a banking business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all administrators, executors, guardians, trustees, and other fiduciaries may properly and legally invest funds, including capital, belonging to them or within their control.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19506 Environmental protection bond fund; creation; composition; restricted subaccounts.

Sec. 19506. (1) The environmental protection bond fund is created in the state treasury.

(2) The fund shall consist of all of the following:

(a) The proceeds of sales of general obligation bonds issued pursuant to former Act No. 326 of the Public Acts of 1988 or part 193 and any premium and accrued interest received on the delivery of the bonds.

(b) Any interest or earnings generated by the proceeds described in subdivision (a).

(c) Any repayment of principal and interest made under a loan program authorized in this part.

(d) Any federal funds received.

(3) The department of treasury may establish restricted subaccounts within the fund as necessary to administer the fund.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19507 Disposition and allocation of bond proceeds; investment of fund; allocation and disposition of interest and earnings; transfer of repayments of principal and interest; disposition of unencumbered balance.

Sec. 19507. (1) The total proceeds of all bonds issued under former Act No. 326 of the Public Acts of 1988 or part 193 shall be deposited into the fund and allocated as follows:

(a) Except as provided in section 19508(1)(a)(*ii*) and as otherwise provided in this act, not more than

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$425,000,000.00 shall be used to clean up sites of toxic and other environmental contamination.

(b) Not more than $150,000,000.00 shall be used for solid waste projects including, but not limited to, reducing, recycling, and properly disposing of solid waste. Money that is available under this subdivision but not appropriated and money that is appropriated under this subdivision that reverts to the fund shall be transferred to the cleanup and redevelopment fund created in section 20108.

(c) Not more than $60,000,000.00 shall be used to capitalize the state water pollution control revolving fund established pursuant to section 16a of the shared credit rating act, Act No. 227 of the Public Acts of 1985, being section 141.1066a of the Michigan Compiled Laws.

(d) Not more than $25,000,000.00 shall be used to fund this state's participation in a regional Great Lakes protection fund.

(2) The state treasurer shall direct the investment of the fund. Except as otherwise may be required by the resolution authorizing the issuance of the bonds in order to maintain the exclusion from gross income of the interest paid on the bonds or to comply with state or federal law, interest and earnings from investment of the proceeds of any bond issue shall be transferred to the cleanup and redevelopment fund created in section 20108, except for the fiscal years 1992-93 and 1993-94, when any such interest and earnings accrued in those, or prior fiscal years, shall be deposited in the state water pollution control revolving fund established pursuant to section 16a of Act No. 227 of the Public Acts of 1985.

(3) Except as otherwise may be required by the resolution authorizing the issuance of the bonds in order to maintain the exclusion from gross income of the interest paid on the bonds or to comply with state or federal law, all repayments of principal and interest earned under a loan program created with money under subsection (1)(b) shall be transferred to the cleanup and redevelopment fund created in section 20108.

(4) The unencumbered balance in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1996, Act 380, Imd. Eff. July 24, 1996.

Popular name: Act 451

Popular name: NREPA

324.19508 Use of money in fund allocated under MCL 324.19507; expenditures; recovery and retention of funds by eligible community; contents and submission of list of projects; appropriations; prioritizing and approving projects; report; "eligible community" defined.

Sec. 19508. (1) Except as provided in subsection (3), money in the fund that is allocated under section 19507 shall be used for the following purposes:

(a) Money in the fund that is allocated under section 19507(1)(a) shall be used for sites identified through part 201, to be expended and recovered by the state in the same manner as provided in that part. Of the funds allocated under section 19507(1)(a), the following apply:

(*i*) Not more than $35,000,000.00 shall be used to clean up sites of environmental contamination that have been identified under former Act No. 307 of the Public Acts of 1982 or part 201; that will not be funded in the next fiscal year; and that have been approved by the department as having measurable economic benefit. The department, after consultation with the department of commerce, shall promulgate rules that establish the criteria and process by which sites will be selected and determined to qualify as sites having measurable economic benefit.

(*ii*) Not more than $10,000,000.00 may be used to provide grants to eligible communities to investigate and determine whether property within an eligible community is a site of environmental contamination and, if so, to characterize the nature and extent of the contamination. A grant shall only be issued under this subparagraph if all of the following conditions are met:

(A) The characterization of the nature and extent of contamination includes an estimate of response activity costs in relation to the value of the property in an uncontaminated state and identifies future potential limitations on the use of the property based upon current environmental conditions.

(B) The property has demonstrable economic development potential. This provision does not require a specific development proposal to be identified.

(C) The property is located within an eligible community that has received less than $1,000,000.00 in total grants under this subparagraph. However, a grant that has resulted in measurable economic benefits shall not be included in the calculation of the $1,000,000.00.

(b) Money in the fund that is allocated for solid waste projects including, but not limited to, reducing, recycling, and properly disposing of solid waste shall be used to fund state projects, to provide grants and loans to local units of government, and to provide grants and loans to private entities for any of the programs identified in part 191, in the amounts appropriated pursuant to subsection (5). Not less than $17,500,000.00 of

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the money for solid waste projects shall be used to fund the following:

(*i*) To promote and expand markets for recycled materials.

(*ii*) To assist in the recycling of solid wastes, including, but not limited to, plastics, metals, tires, wood, and paper.

(*iii*) To promote research on resource recovery.

(*iv*) To study marketing options for products that use recycled materials.

(c) Money in the fund that is allocated to capitalize the state water pollution control revolving fund created in section 16a of the shared credit rating act, Act No. 227 of the Public Acts of 1985, being section 141.1066a of the Michigan Compiled Laws, shall be used as provided in part 53.

(d) Money in the fund that is allocated to fund this state's participation in a regional Great Lakes protection fund pursuant to part 331.

(2) If, by June 28, 1995, the department determines that money allocated under subsection (1)(a)(*ii*) is unlikely to be expended pursuant to that subparagraph, $5,000,000.00 of the money allocated pursuant to that subparagraph shall be expended pursuant to subsection (1)(a)(*i*).

(3) If money that is expended pursuant to subsection (1)(a)(*ii*) is recovered by an eligible community from a person who may be liable under part 201, through proceeds from the sale of the property, or through any other mechanism, and additional funds for environmental response activities on the property are not necessary, the eligible community may retain those funds for expenditure on projects that the department determines are eligible to receive funding under subsection (1)(a)(*ii*). An accounting of the recovered funds must be provided to the department within 30 days of receipt, and approval and expenditure of the recovered funds shall be in the same manner as funds awarded pursuant to subsection (1)(a)(*ii*). If funds are recovered and not spent on other projects pursuant to this subparagraph within 2 years after they are recovered by the eligible community, the eligible community shall forward the money collected to the state treasurer for deposit into the fund to be used pursuant to subsection (1)(a)(*ii*). When accounting for the use of recovered funds, eligible communities may itemize deductions for site preparation and other costs directly related to the reuse of a site funded under this section.

(4) Money provided in the fund may be used by the department of treasury to pay for the cost of issuing bonds under former Act No. 326 of the Public Acts of 1988 or part 193 and by the department to pay department costs as provided in this subsection. Not more than 6% of the total amount specified in section 19507(1)(a), (b), and (d) shall be available for appropriation to the department to pay department costs directly associated with the completion of a project described in section 19507(1)(a), (b), or (d), for which bonds are issued as provided under this part. Any department costs associated with a project described in section 19507(1)(c) for which bonds are issued under this part shall be paid as provided in the state statute implementing the state water pollution control revolving fund. Bond proceeds shall not be available to pay indirect, administrative overhead costs incurred by any organizational unit of the department not directly responsible for the completion of a project. It is the intent of the legislature that general fund appropriations to the department shall not be reduced as a result of department costs funded pursuant to this subsection.

(5) Except as provided in subsection (3), the department shall annually submit a list of all projects that are recommended to be funded under this part to the governor, the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the appropriations committees in the house of representatives and the senate. This list shall be submitted to the legislature not later than February 15 of each year. This list shall also be submitted before any request for supplemental appropriation of bond funds. The list shall include the name, address, and telephone number of the eligible recipient or participant; the nature of the eligible project; the county in which the eligible project is located; an estimate of the total cost of the eligible project; and other information considered pertinent by the department.

(6) The legislature shall appropriate prospective or actual bond proceeds for projects proposed to be funded. Appropriations shall be carried over to succeeding fiscal years until the project for which the funds are appropriated is completed. Environmental cleanup projects that are eligible for funding under subsection (1)(a), but not including subsection (1)(a)(*i*) and (*ii*), shall be prioritized and approved pursuant to the procedures outlined in part 201. Projects to which loans are provided from the state water pollution control revolving fund shall be approved pursuant to state law implementing that fund. The capitalization of the regional Great Lakes protection fund shall be a 1-time appropriation.

(7) Not later than December 31 of each year, the department shall submit a list of the projects financed under this part to the governor, the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the committees of the house of representatives and the senate on appropriations for the department. The list shall include the name, address, and telephone number of the recipient or participant; the nature of the project; the

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amount of money received; the county in which the project is located; and other information considered pertinent by the department.

(8) As used in this section, "eligible community" means any of the following:

(a) A city, village, or township, or a county on behalf of a city, village, or township, that on May 1, 1993 meets the applicable criteria of section 2(d)(*i*) or (*ii*) of the neighborhood enterprise zone act, Act No. 147 of the Public Acts of 1992, being section 207.772 of the Michigan Compiled Laws.

(b) A city that meets any of the following descriptions:

(*i*) Has a population of greater than 10,000 and is located within a county that has a population density of less than 39 residents per square mile.

(*ii*) Has a population of greater than 2,500 and is located within a county that has a population density of less than 39 residents per square mile.

(*iii*) Had an average unemployment rate of 11.5% or more during the most recent calendar year for which data is available from the Michigan employment security commission and meets the criteria of section 2(d)(*i*)(A), (D), and (E) of Act No. 147 of the Public Acts of 1992.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19509 Grant and loan programs; rules; maximum participation; considerations in making grant a loan; interest; applicability.

Sec. 19509. (1) The department shall promulgate rules necessary to implement grant and loan programs provided in this part.

(2) The department shall assure maximum participation by local units of government and by private entities by promulgating rules that provide for a grant or loan program, where appropriate. In determining whether a grant or a loan program is appropriate, the department shall consider whether the project is likely to be undertaken without state assistance; the availability of state funds from other sources; the degree of private sector participation in the type of project under consideration; the extent of the need for the project as a demonstration project; and such other factors considered important by the department.

(3) Prior to making a grant or loan authorized by this part, the department shall consider the extent to which the making of the grant or loan contributes to the achievement of a balanced distribution of grants and loans throughout the state.

(4) The department shall provide in rules promulgated under this part that loans, where authorized, that are issued by the department to private entities shall include an interest charge of not less than 5% per year.

(5) Neither this section nor section 19510 shall apply to loans from the state water pollution control revolving fund.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19510 Application for grant or loan; form; contents.

Sec. 19510. An application for a grant or a loan authorized under this part shall be made on a form prescribed by the department. The department may require the applicant to provide any information reasonably necessary to allow the department to make a determination required by this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19511 Conditions to making grant or loan.

Sec. 19511. The department shall not make a grant or a loan under section 19508(1)(a) or (b) unless all of the following conditions are met:

(a) The applicant demonstrates that the proposed project is in compliance with all applicable state laws and rules, or the proposed project will result in compliance with state laws and rules.

(b) The applicant demonstrates to the department the capability to carry out the proposed project.

(c) The applicant provides the department with evidence that a licensed professional engineer has approved the plans and specifications for the project, if appropriate.

(d) The applicant demonstrates to the department that there is an identifiable source of funds for the future maintenance and operation of the proposed project.

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History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19512 Recipient of grant or loan; conditions; noncompliance; recovery of grant; withholding grant or loan.

Sec. 19512. (1) A recipient of a grant or a loan made under section 19508(1)(a) or (b) shall be subject to all of the following:

(a) A recipient shall keep an accounting of the money spent on the project or facility in a generally accepted manner. The accounting shall be subject to a postaudit.

(b) A recipient shall obtain authorization from the department before implementing a change that significantly alters the proposed project or facility.

(2) The department may revoke a grant or a loan made by it under this part or withhold payment if the recipient fails to comply with the terms and conditions of the grant or loan or with the requirements of this part or the rules promulgated under this part.

(3) The department may recover a grant if the project for which the grant was made never operates.

(4) The department may withhold a grant or a loan until the department determines that the recipient is able to proceed with the proposed project or facility.

(5) To assure timely completion of a project, the department may withhold 10% of the grant or loan amount until the project is complete.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19513 Rules generally.

Sec. 19513. The department shall promulgate rules as are necessary or required to implement this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 299.5101 et seq. and R 299.51001 et seq. of the Michigan Administrative Code.

PART 196
CLEAN MICHIGAN INITIATIVE IMPLEMENTATION

324.19601 Definitions.

Sec. 19601. As used in this part:

(a) "Bonds" means the bonds authorized under the clean Michigan initiative act.

(b) "Corrective action" means that term as it is defined in part 213.

(c) "Department" means the department of environmental quality.

(d) "Facility" means that term as it is defined in part 201.

(e) "Fund" means the clean Michigan initiative bond fund created in section 19606.

(f) "Gaming facility" means a gaming facility regulated under the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226.

(g) "Local unit of government" means a county, city, village, or township, or an agency of a county, city, village, or township; or an authority or other public body created by or pursuant to state law.

(h) "Response activity" means that term as it is defined in part 201.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.19602 Findings and declaration.

Sec. 19602. The legislature finds and declares that the environmental and natural resources protection programs implemented under this part are a public purpose and of paramount public concern in the interest of the health, safety, and general welfare of the citizens of this state.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

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324.19603 Bonds; issuance; refund; security; authority of state treasurer; bonds not subject to revised municipal finance act; sale; issuance subject to agency financing reporting act; interest rate agreement.

Sec. 19603. (1) The bonds shall be issued in 1 or more series, each series to be in a principal amount, to be dated, to have the maturities that may be either serial, term, or both, to bear interest at a rate or rates, to be subject or not subject to prior redemption, and if subject to prior redemption with or without call premiums, to be payable at a place or places, to have or not have provisions for registration as to principal only or as to both principal and interest, to be in a form and to be executed in a manner as shall be determined by resolution to be adopted by the state administrative board and subject to covenants, directions, restrictions, or rights specified by resolution to be adopted by the state administrative board as necessary to ensure the marketability, insurability, or tax exempt status of the bonds. The state administrative board shall rotate the services of legal counsel when issuing bonds.

(2) The state administrative board may refund bonds issued under this part by the issuance of new bonds, whether or not the bonds to be refunded have matured or are subject to prior redemption. The state administrative board may issue bonds partly to refund bonds issued under this part and partly for any other purpose provided by this part. The principal amount of any refunding bonds issued under this section shall not be counted against the limitation on principal amount provided in the clean Michigan initiative act, 1998 PA 284, MCL 324.95101 to 324.95108. Further, refunding bonds issued under this section are not subject to the restrictions of section 19607.

(3) The state administrative board may approve insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds, and any other transaction to provide security to assure timely payment or purchase of any bond issued under this part.

(4) The state administrative board may authorize the state treasurer, but only within limitations contained in the authorizing resolution of the board, to do 1 or more of the following:

(a) Sell and deliver and receive payment for the bonds.

(b) Deliver bonds partly to refund bonds and partly for other authorized purposes.

(c) Select which outstanding bonds will be refunded, if any, by the new issue of bonds.

(d) Buy issued bonds at not more than their face value.

(e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, purchase prices, purchase dates, remarketing dates, denominations, dates of issuance, interest payment dates, redemption rights at the option of the state or the owner, the place and time of delivery and payment, and other matters and procedures necessary to complete the authorized transactions.

(f) Execute, deliver, and pay the cost of remarketing agreements, insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds or notes, and any other transaction to provide security to assure timely payments or purchase of any bond issued under this part.

(5) The bonds are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(6) The bonds or any series of the bonds shall be sold at a price as determined by the state administrative board.

(7) The bonds shall be sold in accordance with a schedule established by the state administrative board.

(8) The issuance of bonds under this section is subject to the agency financing reporting act.

(9) For the purpose of more effectively managing its debt service, the state administrative board may enter into an interest rate exchange or swap, hedge, or similar agreement with respect to its bonds or notes on the terms and payable from the sources and with the security, if any, as determined by a resolution of the state administrative board.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998;—Am. 2002, Act 383, Imd. Eff. May 28, 2002.

Popular name: Act 451

Popular name: NREPA

324.19604 Bonds as negotiable and exempt from taxation.

Sec. 19604. The bonds shall be fully negotiable under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102. The bonds and the interest on the bonds shall be exempt from all taxation by the state or any political subdivision of the state.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

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324.19605 Bonds as securities; investment of funds.

Sec. 19605. The bonds are securities in which banks, savings and loan associations, investment companies, credit unions, and other persons carrying on a banking business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all administrators, executors, guardians, trustees, and other fiduciaries may properly and legally invest funds, including capital, belonging to them or within their control.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.19606 Clean Michigan initiative bond fund; creation; composition; establishment of restricted subaccounts.

Sec. 19606. (1) The clean Michigan initiative bond fund is created in the state treasury.

(2) The fund shall consist of all of the following:

(a) The proceeds of sales of the bonds and any premium and accrued interest received on the delivery of the bonds.

(b) Any interest or earnings generated by the proceeds described in subdivision (a).

(c) Any repayment of principal and interest made under a loan program authorized in this part.

(d) Any federal or other funds received.

(3) The department of treasury may establish restricted subaccounts within the fund as necessary to administer the fund.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.19607 Disposition and allocation of fund; investment; loan repayments; expenditures; unencumbered balance not to revert to general fund; annual accounting.

Sec. 19607. (1) The total proceeds of all bonds shall be deposited into the fund and allocated as follows:

(a) Not more than $335,000,000.00 shall be used for response activities at facilities.

(b) Not more than $50,000,000.00 shall be used for waterfront improvements.

(c) Not more than $25,000,000.00 shall be used for remediation of contaminated lake and river sediments.

(d) Not more than $50,000,000.00 shall be used for nonpoint source pollution prevention and control projects or wellhead protection projects.

(e) Not more than $90,000,000.00 shall be used for water quality monitoring and water resources protection and pollution control activities.

(f) Not more than $20,000,000.00 shall be used for pollution prevention programs.

(g) Not more than $5,000,000.00 shall be used to abate lead hazards.

(h) Not more than $50,000,000.00 shall be used for state park infrastructure improvements.

(i) Not more than $50,000,000.00 shall be used for local recreation projects.

(2) The state treasurer shall direct the investment of the fund. Except as may be required to maintain the exclusion from gross income of the interest paid on the bonds or to comply otherwise with state or federal law, interest and earnings from investment of the proceeds of any bond issue shall be allocated in the same proportion as earned on the investment of the proceeds of the bond issue.

(3) Except as may be required to maintain the exclusion from gross income of the interest paid on the bonds or to comply otherwise with state or federal law, all repayments of principal and interest earned under a loan program authorized by this part shall be credited to the appropriate restricted subaccount of the fund and used for the purposes authorized for that subaccount or to pay debt service on any obligation issued which pledges the loan repayments and the proceeds of which are deposited in that subaccount.

(4) The bond proceeds shall be expended in an appropriate manner that maintains the tax exempt status of the bonds.

(5) The unencumbered balance in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(6) The department shall provide an annual accounting of bond proceeds spending on a cash basis to the department of treasury in order for the state to comply with requirements set forth for issuing tax exempt bonds, including arbitrage rebate calculations. This accounting shall be submitted to the governor, the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the appropriations committees in the house of

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representatives and the senate.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.19608 Use of money allocated under MCL 324.19607; purposes; notice to public advisory council; use of fund to develop municipal or commercial marina prohibited; payment of costs; grant prohibited; submission of eligible project list; carrying over appropriations until project completion; submission of list of financed projects.

Sec. 19608. (1) Money in the fund that is allocated under section 19607 shall be used for the following purposes:

(a) Money allocated under section 19607(1)(a) shall be used by the department to fund all of the following:

(*i*) Corrective actions undertaken by the department to address releases from leaking underground storage tanks pursuant to part 213.

(*ii*) Response activities undertaken by the department at facilities pursuant to part 201 to address public health and environmental problems or to promote redevelopment.

(*iii*) Assessment activities undertaken by the department to determine whether a property is a facility.

(*iv*) $75,000,000.00 shall be used to provide grants and loans to local units of government and brownfield redevelopment authorities created under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672, for response activities at known or suspected facilities with redevelopment potential. Of the money provided for in this subparagraph, not more than $50,000,000.00 shall be used to provide grants and not more than $25,000,000.00 shall be used to provide loans pursuant to the clean Michigan initiative revolving loan program created in section 19608a. However, grants or loans provided for in this subparagraph shall not be made to a local unit of government or a brownfield redevelopment authority that is responsible for causing a release or threat of release under part 201 at the site proposed for grant or loan funding.

(b) Money allocated under section 19607(1)(b) shall be used for waterfront redevelopment grants pursuant to part 795.

(c) Money allocated under section 19607(1)(c) shall be used for response activities for the remediation of contaminated lake and river sediments pursuant to part 201.

(d) Money allocated under section 19607(1)(d) shall be used for nonpoint source pollution prevention and control grants or wellhead protection grants pursuant to part 88.

(e) Money allocated under section 19607(1)(e) shall be deposited into the clean water fund created in section 8807.

(f) Money allocated under section 19607(1)(f) shall be expended as follows:

(*i*) $10,000,000.00 shall be deposited into the retired engineers technical assistance program fund created in section 14512.

(*ii*) $5,000,000.00 shall be deposited into the small business pollution prevention assistance revolving loan fund created in section 14513.

(*iii*) $5,000,000.00 shall be used by the department to implement pollution prevention activities other than those funded under subparagraphs (*i*) and (*ii*).

(g) Money that is allocated under section 19607(1)(g) shall be used by the department of community health for remediation and physical improvements to structures to abate or minimize exposure of persons to lead hazards.

(h) Money allocated under section 19607(1)(h) shall be used for infrastructure improvements at Michigan state parks as determined by the department of natural resources. The installation or upgrade of drinking water systems or rest room facilities shall be the first priority.

(i) Money allocated under section 19607(1)(i) shall be used to provide grants to local units of government for local recreation projects pursuant to part 716.

(2) Of the money allocated under section 19607(1)(a), $93,000,000.00 shall be used for facilities that pose an imminent or substantial endangerment to the public health, safety, or welfare, or to the environment. For purposes of this subsection, facilities that pose an imminent or substantial endangerment shall include, but are not limited to, those where public access poses hazards because of potential exposure to chemicals or safety risks and where drinking water supplies are threatened by contamination.

(3) Before expending any funds allocated under subsection (1)(c) at a site that is an area of concern as designated by the parties to the Great Lakes water quality agreement, the department shall notify the public advisory council established to oversee that area of concern regarding the development, implementation, and evaluation of response activities to be conducted with money in the fund at that area of concern.

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(4) Money in the fund shall not be used to develop a municipal or commercial marina.

(5) Money provided in the fund may be used by the department of treasury to pay for the cost of issuing bonds and by the department and the department of natural resources to pay department costs as provided in this subsection. Not more than 3% of the total amount specified in section 19607(1)(a) to (f) shall be available for appropriation to the department to pay its costs directly associated with the completion of a project authorized by section 19607(1)(a) to (f). Not more than 3% of the total amount specified in section 19607(1)(h) and (i) shall be available for appropriation to the department of natural resources to pay its costs directly associated with the completion of a project authorized by section 19607(1)(h) and (i). It is the intent of the legislature that general fund appropriations to the department and to the department of natural resources shall not be reduced as a result of costs funded pursuant to this subsection.

(6) A grant shall not be provided under this part for a project that is located at any of the following:

(a) Land sited for use as a gaming facility or as a stadium or arena for use by a professional sports team.

(b) Land or other facilities owned or operated by a gaming facility or by a stadium or arena for use by a professional sports team.

(c) Land within a project area described in a project plan pursuant to the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636, for a gaming facility.

(7) The department, the department of natural resources, and the department of community health shall each submit annually a list of all projects that will be undertaken by that department that are recommended to be funded under this part. The list shall be submitted to the governor, the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the appropriations committees in the house of representatives and the senate. The list shall be submitted to the legislative committees not later than February 15 of each year. This list shall also be submitted before any request for supplemental appropriation of bond funds. For each eligible project, the list shall include the nature of the eligible project; the county in which the eligible project is located; an estimate of the total cost of the eligible project; and other information considered pertinent by the administering state department. A project that is funded by a grant or loan with money from the fund does not need to be included on the list submitted under this subsection. However, money in the fund that is appropriated for grants and loans shall not be encumbered or expended until the administering state department has reported those projects that have been approved for a grant or a loan to the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment and to the appropriations subcommittees in the house of representatives and the senate on natural resources and environmental quality. Before submitting the first cycle of recommended projects under subsection (1)(a), the department shall publish and disseminate the criteria it will use in evaluating and recommending these projects for funding.

(8) The legislature shall appropriate prospective or actual bond proceeds for projects proposed to be funded. Appropriations shall be carried over to succeeding fiscal years until the project for which the funds are appropriated is completed.

(9) Not later than December 31 of each year, the department, the department of natural resources, and the department of community health shall each submit a list of the projects financed under this part by that department to the governor, the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the subcommittees of the house of representatives and the senate on appropriations on natural resources and environmental quality. Each list shall include the name, address, and telephone number of the recipient or participant, if appropriate; the name and location of the project; the nature of the project; the amount of money allocated to the project; the county in which the project is located; a brief summary of what has been accomplished by the project; and other information considered pertinent by the administering state department.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998;—Am. 2003, Act 252, Imd. Eff. Dec. 29, 2003;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.19608a Clean Michigan initiative revolving loan program.

Sec. 19608a. (1) The department shall create a clean Michigan initiative revolving loan program for the purpose of making loans to local units of government and brownfield redevelopment authorities created under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672, for response activities at known or suspected facilities with redevelopment potential.

(2) The department shall accept, and consider for approval, applications for loans throughout the year. The

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department shall develop written instructions for prospective applicants, including the criteria that will be used in application review and approval.

(3) Final application decisions shall be made by the department within 90 days of submittal of a complete loan application.

(4) A complete application shall include all of the following:

(a) A description of the proposed eligible activities.

(b) An itemized budget for the proposed eligible activities.

(c) A schedule for the completion of the proposed eligible activities.

(d) The location of the property.

(e) The current ownership and ownership history of the property.

(f) The current use of the property.

(g) A detailed history of the use of the property.

(h) The existing and proposed future zoning of the property.

(i) If the property is not owned by the applicant, a draft of an enforceable agreement between the property owner and the applicant that commits the property owner to cooperate with the applicant, including a commitment to allow access to the property to complete, at a minimum, the proposed eligible activities.

(j) A description of the property's economic redevelopment potential.

(k) A resolution from the governing body of the applicant committing to repayment of the loan according to the terms of this section.

(*l*) Other information as specified by the department in its written instructions.

(5) To receive loan funds, approved applicants must enter into a loan agreement with the department. At a minimum, the loan agreement shall contain all of the following:

(a) The approved eligible activities to be undertaken with loan funds.

(b) An implementation schedule for the approved eligible activities.

(c) Reporting requirements, including, at a minimum, the following:

(*i*) The loan recipient shall submit a progress status report to the department every 6 months during the implementation schedule.

(*ii*) The loan recipient shall provide a final report within 3 months of completion of the loan-funded activities that includes documentation of project costs and expenditures, including invoices and proof of payment.

(d) If the property is not owned by the loan recipient, an executed agreement that has been approved by the department that meets the requirements of subsection (4)(i).

(e) Other provisions as considered appropriate by the department.

(6) As used in this section:

(a) “Baseline environmental assessment” and “response activity” mean those terms as they are defined in section 20101.

(b) “Due care activities” means those activities conducted under section 20107a.

(c) “Eligible activities” means baseline environmental assessment activities, due care activities, and any additional response activity. Eligible activities include only those activities necessary to facilitate redevelopment. All eligible activities must be consistent with a work plan or remedial action plan pursuant to section 15 of the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2665. Unless otherwise approved by the director, only activities carried out and costs incurred after execution of a loan agreement are eligible.

History: Add. 2003, Act 253, Imd. Eff. Dec. 29, 2003.

Popular name: Act 451

Popular name: NREPA

324.19609 Grant or loan application; form or format.

Sec. 19609. An application for a grant or a loan from the fund shall be made on a form or in a format prescribed by the administering state department. The administering state department may require the applicant to provide any information reasonably necessary to allow the administering state department to make a determination required by this part.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.19610 Grant or loan funding; conditions.

Sec. 19610. The administering state department shall not make a grant or a loan with money from the fund

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unless all of the following conditions are met:

(a) The applicant demonstrates that the proposed project is in compliance with all applicable state laws and rules or will result in compliance with state laws and rules.

(b) The applicant demonstrates to the administering state department the capability to carry out the proposed project.

(c) The applicant demonstrates to the administering state department that there is an identifiable source of funds for the future maintenance and operation of the proposed project, if appropriate.

(d) Within the last 24 months, the applicant has successfully undergone an audit conducted in accordance with generally accepted auditing standards.

(e) Within the last 24 months, the applicant has not had a grant from the administering state department revoked or terminated or had the administering state department determine that the applicant demonstrated an inability to manage a grant.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.19611 Balancing distribution of grants and loans.

Sec. 19611. Prior to making a grant or loan with money from the fund, the administering state department shall consider the extent to which the making of the grant or loan contributes to the achievement of a balanced distribution of grants and loans throughout the state.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.19612 Duties of grant or loan recipient; revoking grant or withholding payment; cancellation of grant or loan offer; termination of grant or loan agreement; renegotiation of outstanding loan terms; disposition of loan payments and interest; default.

Sec. 19612. (1) A recipient of a grant or a loan made with money from the fund shall do both of the following:

(a) Keep an accounting of the money spent on the project or facility in a generally accepted manner. The accounting shall be subject to a postaudit.

(b) Obtain authorization from the administering state department before implementing a change that significantly alters the proposed project.

(2) The administering state department may revoke a grant or a loan made with money from the fund or withhold payment if the recipient fails to comply with the terms and conditions of the grant or loan agreement or with the requirements of this part or the rules promulgated under this part, or with other applicable law or rules. If a grant or loan is revoked, the administering state department may recover all funds awarded.

(3) The administering state department may withhold a grant or a loan until the administering state department determines that the recipient is able to proceed with the proposed project.

(4) To assure timely completion of a project, the administering state department may withhold 10% of the grant or loan amount until the project is complete.

(5) If an approved applicant fails to sign a grant or loan agreement within 90 days after receipt of a written grant or loan offer by the administering state department, the administering state department may cancel the grant or loan offer. The applicant may not appeal or contest a cancellation pursuant to this subsection.

(6) The administering state department may terminate a grant or loan agreement and require immediate repayment of the grant or loan if the recipient uses grant or loan funds for any purpose other than for the approved activities specified in the grant or loan agreement. The administering state department shall provide the recipient written notice of the termination 30 days prior to the termination.

(7) A loan made with money in the fund shall have the following terms:

(a) A loan interest rate of not more than 50% of the prime rate as determined by the administering state department as of the date of approval of the loan.

(b) Loan recipients shall repay loans in equal annual installments of principal and interest beginning not later than 5 years after execution of a loan agreement and concluding not later than 15 years after execution of a loan agreement.

(c) A loan recipient shall enter into a loan agreement with the administering state department.

(d) Upon default of a loan, as determined by the administering state department, or upon the request of the loan recipient as a method to repay the loan, the department of treasury shall withhold state payments from

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the loan recipient in amounts consistent with the repayment schedule in the loan agreement until the loan is repaid. The department of treasury shall deposit these withheld funds into the fund until the loan is repaid.

(8) Upon request of a loan recipient and a showing of financial hardship related to the project that was financed in whole or in part by the loan, the administering state department may renegotiate the terms of any outstanding loan, including the length of the loan, the interest rate, and the repayment terms. However, the administering state department shall not reduce or eliminate the amount of the outstanding loan principal. The department shall report to the legislature the number of loans refinanced under this subsection, the local unit of government or authority responsible for each loan refinanced, and the change in the terms of the loan, as appropriate. This information may be included in the report prepared by the department under section 16 of the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2666.

(9) Loan payments and interest shall be deposited in the fund.

(10) Upon default of a loan, as determined by the administering state department, or upon the request of the loan recipient as a method to repay the loan, the department of treasury shall withhold from the loan recipient state payments in amounts consistent with the repayment schedule in the loan agreement until the loan is repaid. The department of treasury shall deposit these withheld funds into the fund until the loan is repaid.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 115, Imd. Eff. Apr. 11, 2014.

Popular name: Act 451

Popular name: NREPA

324.19613 Grants and loans under MCL 324.19608; conditions.

Sec. 19613. Of the funds to be used to provide grants and loans under section 19608(1)(a)(*iv*), all of the following conditions apply:

(a) A recipient of a grant shall receive not more than 1 grant per year not to exceed $1,000,000.00 per grant.

(b) A recipient of a loan shall receive a maximum of 1 loan per year not to exceed $1,000,000.00 per loan.

(c) A grant shall be awarded only if the department determines that both of the following apply:

(*i*) The property is a facility as defined in section 20101.

(*ii*) The proposed development of the property will result in measurable economic benefit in excess of the grant amount requested by the applicant.

(d) A loan shall be awarded only if the department determines that both of the following apply:

(*i*) The property is a facility as defined in section 20101 or is suspected of being a facility.

(*ii*) The property has economic development potential based on the applicant's planned use of the property.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.19614 Recovery of costs.

Sec. 19614. The department and the department of the attorney general may recover costs expended pursuant to section 19608(1)(a)(*i*) to (*iv*) for corrective actions, response activities, site assessments, and all other recoverable costs under part 201 from persons who are liable under part 201. Actions to recover costs shall be undertaken in the manner provided in part 201.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.19615 Performance audit.

Sec. 19615. Every 2 years that state programs funded with money from the fund continue to be administered, the auditor general shall conduct a performance audit of these programs. Upon completion of a performance audit under this section, the auditor general shall submit a copy of the performance audit to the audited department and to the legislature.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.19616 Rules.

Sec. 19616. The department may promulgate rules as are necessary to implement this part.

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History: Add. 1998, Act 288, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

PART 197

GREAT LAKES WATER QUALITY BOND IMPLEMENTATION

324.19701 Definitions.

Sec. 19701. As used in this part:

(a) "Bonds" means the bonds authorized under the Great Lakes water quality bond authorization act.

(b) "Department" means the department of environmental quality.

(c) "Fund" means the Great Lakes water quality bond fund created in section 19706.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.19702 Legislative findings.

Sec. 19702. The legislature finds and declares that the environmental, natural resources, and water quality protection programs implemented under this part are a public purpose and of paramount public concern in the interest of the health, safety, and general welfare of the citizens of this state.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.19703 Bonds generally.

Sec. 19703. (1) Subject to subsection (2), the bonds shall be issued in 1 or more series, each series to be in a principal amount, to be dated, to have the maturities which may be either serial, term, or both, to bear interest at a rate or rates, to be subject or not subject to prior redemption, and if subject to prior redemption with or without call premiums, to be payable at a place or places, to have or not have provisions for registration as to principal only or as to both principal and interest, to be in a form and to be executed in a manner as shall be determined by resolution to be adopted by the state administrative board and subject to or granting those covenants, directions, restrictions, or rights specified by resolution to be adopted by the state administrative board as necessary to ensure the marketability, insurability, or tax exempt status of the bonds. The state administrative board shall rotate the services of legal counsel when issuing bonds.

(2) The state administrative board may refund bonds issued under this part by the issuance of new bonds, whether or not the bonds to be refunded have matured or are subject to prior redemption. The state administrative board may issue bonds partly to refund bonds issued under this part and partly for any other purpose provided by this part. The principal amount of any refunding bonds issued pursuant to this section shall not be counted against the limitation on principal amount provided in the Great Lakes water quality bond authorization act.

(3) The state administrative board may authorize and approve insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds, and any other transaction to provide security to assure timely payment or purchase of any bond issued under this part. The state administrative board may

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authorize and approve an interest rate exchange or swap, hedge, or similar agreement in connection with the issuance of bonds under this part, payable from the same source as the bonds.

(4) The state administrative board may authorize the state treasurer, but only within limitations contained in the authorizing resolution of the board, to do 1 or more of the following:

(a) Sell and deliver and receive payment for the bonds.

(b) Deliver bonds partly to refund bonds and partly for other authorized purposes.

(c) Select which outstanding bonds will be refunded, if any, by the new issue of bonds.

(d) Buy issued bonds.

(e) Approve interest rates or methods for determining interest rates, including fixed or variable rates, prices, discounts, maturities, principal amounts, purchase prices, purchase dates, remarketing dates, denominations, dates of issuance, interest payment dates, redemption rights at the option of the state or the owner, the place and time of delivery and payment, and other matters and procedures necessary to complete the authorized transactions.

(f) Execute, deliver, and pay the cost of remarketing agreements, insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds or notes, and any other transaction to provide security to assure timely payments or purchase of any bond issued under this part.

(g) Determine the details of, execute, deliver, and pay the cost of any interest rate exchange or swap, hedge, or similar agreement.

(h) Pledge all or any portion of the strategic water quality initiatives fund created in section 5204 to secure bonds issued or to be issued by the Michigan municipal bond authority created in section 4 of the shared credit rating act, 1985 PA 227, MCL 141.1054, for the purpose of funding loans under the strategic water quality initiatives loan program under part 52.

(5) The bonds shall not be subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. Issuance of the bonds shall be subject to the agency financing reporting act, 2002 PA 470, MCL 129.171 to 129.177.

(6) The bonds or any series of the bonds shall be sold at public or private sale at such price or may be issued and deposited directly into the state water pollution control revolving fund created in section 16a of the shared credit rating act, 1985 PA 227, MCL 141.1066a, or the strategic water quality initiatives fund created in section 5204, as determined by or pursuant to a resolution of the state administrative board.

(7) Not more than 20% of the bonds shall be issued in any year. The first bond issuance shall be structured in such a manner that debt payments do not begin before October 1, 2003. In making the determination to issue these bonds, the department shall consider the availability of the workforce to conduct the activities authorized by this part, in order to ensure a competitive bidding process.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002;—Am. 2003, Act 287, Imd. Eff. Jan. 8, 2004.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.19703a Issuance of bonds; conditions; report; "fundable range" defined.

Sec. 19703a. (1) Bonds issued under this part are subject to the following:

(a) For the state fiscal year ending on September 30, 2011, bonds shall not be issued or expended under this part for the purposes of section 5204b, unless the department of natural resources and environment has established a fundable range of at least $210,000,000.00 for that state fiscal year to fund projects under the state water pollution control revolving fund created in section 16a of the shared credit rating act, 1985 PA 227, MCL 141.1066a.

(b) For the state fiscal year ending on September 30, 2012, bonds shall not be issued or expended under this part for the purposes of section 5204b, unless the department of natural resources and environment has established a fundable range of at least $259,000,000.00 for that state fiscal year to fund projects under the state water pollution control revolving fund created in section 16a of the shared credit rating act, 1985 PA 227, MCL 141.1066a, to the extent administratively possible and as long as sufficient applications have been submitted to the department of natural resources and environment.

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(c) For each state fiscal year beginning with the state fiscal year ending September 30, 2013, the department of natural resources and environment, in conjunction with the department of treasury, shall seek to fully fund all eligible projects applying for assistance under part 53, to the extent administratively possible, utilizing the bond proceeds under this part as necessary to achieve this goal, considering the recommendations of the state water pollution control revolving fund advisory committee created in section 5317.

(2) If the department of natural resources and environment is not able to establish a fundable range under subsection (1)(b) of at least $259,000,000.00, the department of natural resources and environment shall submit to the standing committees of the senate and house of representatives with jurisdiction over issues primarily pertaining to natural resources and the environment a report detailing the reasons why the fundable range was not set at this level.

(3) As used in this section, "fundable range" means that term as it is defined in section 5301.

History: Add. 2010, Act 232, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: NREPA

324.19704 Bonds as negotiable.

Sec. 19704. The bonds shall be fully negotiable under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102. The bonds and the interest on the bonds shall be exempt from all taxation by the state or any political subdivision of the state.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.19705 Bonds as securities.

Sec. 19705. The bonds are securities in which banks, savings and loan associations, state authorities, investment companies, credit unions, and other persons carrying on a banking business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all administrators, executors, guardians, trustees, and other fiduciaries may properly and legally invest funds, including capital, belonging to them or within their control.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.19706 Great Lakes water quality bond fund; creation; subaccounts.

Sec. 19706. (1) The Great Lakes water quality bond fund is created in the state treasury.

(2) The fund shall consist of all of the following:

(a) The proceeds of sales of the bonds sold at public or private sale and any premium and accrued interest received on the delivery of the bonds.

(b) Any interest or earnings generated by the proceeds described in subdivision (a).

(c) Any federal or other funds received.

(3) The department of treasury may establish restricted subaccounts within the fund as necessary to administer the fund.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002.

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Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

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Popular name: Act 451

Popular name: NREPA

324.19707 Bond proceeds; disposition; investment; expenditure; tax exempt status; funds remaining at close of fiscal year; annual accounting.

Sec. 19707. (1) The total proceeds of all bonds sold at public or private sale shall be deposited into the fund.

(2) The state treasurer shall direct the investment of the fund.

(3) The bond proceeds shall be expended in an appropriate manner that maintains the tax exempt status of any bonds issued as tax exempt bonds.

(4) The unencumbered balance in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(5) The department shall provide an annual accounting of bond proceeds spending on a cash basis to the department of treasury. This accounting shall be submitted to the governor, the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the appropriations committees in the house of representatives and the senate.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.19708 Funds; transfer; use; deposit of certain bonds in determination of allocation and transfer; audit.

Sec. 19708. (1) Subject to subsections (2), (3), and (4), the state treasurer shall transfer money in the fund as follows:

(a) In aggregate, not more than $290,000,000.00 of the money in the fund shall be deposited into the state water pollution control revolving fund created in section 16a of the shared credit rating act, 1985 PA 227, MCL 141.1066a.

(b) In aggregate, not more than $710,000,000.00 of the money in the fund shall be deposited into the strategic water quality initiatives fund created in section 5204.

(2) Money in the fund may be used by the department of treasury to pay for the cost of issuing bonds and the costs incurred under section 19703(3).

(3) Bonds that are directly deposited into the state water pollution control revolving fund or strategic water quality initiatives fund as authorized by section 19703 shall be taken into account for the purpose of determining the allocation and transfer of money set forth in subsection (1).

(4) Not later than December 14, 2012, the auditor general shall conduct an audit of the fund to assure that the money in the fund has been expended in compliance with law. Not later than December 14, 2014, the auditor general shall update its initial audit to assure that money in the fund has been expended in compliance with law.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002;—Am. 2005, Act 256, Imd. Eff. Dec. 1, 2005;—Am. 2010, Act 232, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 562, Imd. Eff. Jan. 2, 2013.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond

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authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

CHAPTER 7

REMEDIATION

PART 201

ENVIRONMENTAL REMEDIATION

324.20101 Definitions.

Sec. 20101. (1) As used in this part:

(a) "Act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(b) "Agricultural property" means real property used for farming in any of its branches, including cultivating of soil; growing and harvesting of any agricultural, horticultural, or floricultural commodity; dairying; raising of livestock, bees, fish, fur-bearing animals, or poultry; turf and tree farming; and performing any practices on a farm as an incident to, or in conjunction with, these farming operations. Agricultural property does not include property used for commercial storage, processing, distribution, marketing, or shipping operations.

(c) "All appropriate inquiry" means an evaluation of environmental conditions at a property at the time of purchase, occupancy, or foreclosure that reasonably defines the existing conditions and circumstances at the property in conformance with 40 CFR 312 (2014).

(d) "Attorney general" means the department of the attorney general.

(e) "Background concentration" means the concentration or level of a hazardous substance that exists in the environment at or regionally proximate to a facility that is not attributable to any release at or regionally proximate to the facility. A person may demonstrate that a hazardous substance is not present at a level that exceeds background concentration by any of the following methods:

(*i*) The hazardous substance complies with the statewide default background levels under R 299.46 of the Michigan administrative code.

(*ii*) The hazardous substance is listed in table 2, 3, or 4 of the department's 2005 Michigan background soil survey, is present in a soil type identified in 1 or more of those tables, and meets 1 of the following:

(A) If a glacial lobe area in table 2, 3, or 4 lists an arithmetic or geometric mean for the hazardous substance that is represented by 9 or more samples, the concentration of that hazardous substance is the lesser of the following:

(I) Two standard deviations of that mean for the soil type and glacial lobe area in which the hazardous substance is located.

(II) The uppermost value in the typical range of data for the hazardous substance in table 1 of the department's 2005 Michigan background soil survey.

(B) If a glacial lobe area in table 2, 3, or 4 lists a nonparametric median for the hazardous substance that is represented by 10 or more samples, the concentration of that hazardous substance is the lesser of the following:

(I) The 97.5 quantile for the soil type and glacial lobe area in which the hazardous substance is located.

(II) The uppermost value in the typical range of data for the hazardous substance in table 1 of the department's 2005 Michigan background soil survey.

(C) The concentration of the hazardous substance meets a level established using the 2005 Michigan background soil survey in a manner that is approved by the department.

(*iii*) The hazardous substance is listed in any other study or survey conducted or approved by the department and is within the concentrations or falls within the typical ranges published in that study or survey.

(*iv*) A site-specific demonstration.

(f) "Baseline environmental assessment" means a written document that describes the results of an all

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appropriate inquiry and the sampling and analysis that confirm that the property is or contains a facility. For purposes of a baseline environmental assessment, the all appropriate inquiry may be conducted or updated prior to or within 45 days after the earlier of the date of purchase, occupancy, or foreclosure.

(g) "Board" means the brownfield redevelopment board created in section 20104a.

(h) "Certificate of completion" means a written response provided by the department confirming that a response activity has been completed in accordance with the applicable requirements of this part and is approved by the department.

(i) "Cleanup criteria for unrestricted residential use" means any of the following:

(*i*) Cleanup criteria that satisfy the requirements for the residential category in section 20120a(1)(a).

(*ii*) Cleanup criteria for unrestricted residential use under part 213.

(*iii*) Site-specific cleanup criteria approved by the department for unrestricted residential use pursuant to sections 20120a and 20120b.

(j) "Department" means the director or his or her designee to whom the director delegates a power or duty by written instrument.

(k) "Director" means the director of the department of environmental quality.

(*l*) "Directors" means the directors or their designees of the departments of environmental quality, community health, agriculture and rural development, and state police.

(m) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous substance into or on any land or water so that the hazardous substance or any constituent of the hazardous substance may enter the environment or be emitted into the air or discharged into any groundwater or surface water.

(n) "Enforcement costs" means court expenses, reasonable attorney fees of the attorney general, and other reasonable expenses of an executive department that are incurred in relation to enforcement under this part.

(o) "Environment" or "natural resources" means land, surface water, groundwater, subsurface strata, air, fish, wildlife, or biota within the state.

(p) "Environmental contamination" means the release of a hazardous substance, or the potential release of a discarded hazardous substance, in a quantity which is or may become injurious to the environment or to the public health, safety, or welfare.

(q) "Evaluation" means those activities including, but not limited to, investigation, studies, sampling, analysis, development of feasibility studies, and administrative efforts that are needed to determine the nature, extent, and impact of a release or threat of release and necessary response activities.

(r) "Exacerbation" means the occurrence of either of the following caused by an activity undertaken by the person who owns or operates the property, with respect to contamination for which the person is not liable:

(*i*) Migration of contamination beyond the boundaries of the property that is the source of the release at levels above cleanup criteria for unrestricted residential use unless a criterion is not relevant because exposure is reliably restricted as otherwise provided in this part.

(*ii*) A change in facility conditions that increases response activity costs.

(s) "Facility" means any area, place, parcel or parcels of property, or portion of a parcel of property where a hazardous substance in excess of the concentrations that satisfy the cleanup criteria for unrestricted residential use has been released, deposited, disposed of, or otherwise comes to be located. Facility does not include any area, place, parcel or parcels of property, or portion of a parcel of property where any of the following conditions are satisfied:

(*i*) Response activities have been completed under this part or the comprehensive environmental response, compensation, and liability act, 42 USC 9601 to 9675, that satisfy the cleanup criteria for unrestricted residential use.

(*ii*) Corrective action has been completed under the resource conservation and recovery act, 42 USC 6901 to 6992k, part 111, or part 213 that satisfies the cleanup criteria for unrestricted residential use.

(*iii*) Site-specific criteria that have been approved by the department for application at the area, place, parcel of property, or portion of a parcel of property are met or satisfied and hazardous substances at the area, place, or property that are not addressed by site-specific criteria satisfy the cleanup criteria for unrestricted residential use.

(*iv*) Hazardous substances in concentrations above unrestricted residential cleanup criteria are present due only to the placement, storage, or use of beneficial use by-products or inert materials at the area, place, or property in compliance with part 115.

(*v*) The property has been lawfully split, subdivided, or divided from a facility and does not contain hazardous substances in excess of concentrations that satisfy the cleanup criteria for unrestricted residential use.

(*vi*) Natural attenuation or other natural processes have reduced concentrations of hazardous substances to

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levels at or below the cleanup criteria for unrestricted residential use.

(t) "Feasibility study" means a process for developing, evaluating, and selecting appropriate response activities.

(u) "Financial assurance" means a performance bond, escrow, cash, certificate of deposit, irrevocable letter of credit, corporate guarantee, or other equivalent security, or any combination thereof.

(v) "Foreclosure" means possession of a property by a lender on which it has foreclosed on a security interest or the expiration of a lawful redemption period, whichever occurs first.

(w) "Fund" means the cleanup and redevelopment fund established in section 20108.

(x) "Hazardous substance" means 1 or more of the following, but does not include fruit, vegetable, or field crop residuals or processing by-products, or aquatic plants, that are applied to the land for an agricultural use or for use as an animal feed, if the use is consistent with generally accepted agricultural management practices at the time of the application or stamp sands:

(*i*) Any substance that the department demonstrates, on a case by case basis, poses an unacceptable risk to the public health, safety, or welfare, or the environment, considering the fate of the material, dose-response, toxicity, or adverse impact on natural resources.

(*ii*) Hazardous substance as defined in the comprehensive environmental response, compensation, and liability act, 42 USC 9601 to 9675.

(*iii*) Hazardous waste as defined in part 111.

(*iv*) Petroleum as described as a regulated substance in section 21303.

(y) "Interim response activity" means the cleanup or removal of a released hazardous substance or the taking of other actions, prior to the implementation of a remedial action, as may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, or to the environment. Interim response activity also includes, but is not limited to, measures to limit access, replacement of water supplies, and temporary relocation of people as determined to be necessary by the department. In addition, interim response activity means the taking of other actions as may be necessary to prevent, minimize, or mitigate a threatened release.

(z) "Lender" means any of the following:

(*i*) A state or nationally chartered bank.

(*ii*) A state or federally chartered savings and loan association or savings bank.

(*iii*) A state or federally chartered credit union.

(*iv*) Any other state or federally chartered lending institution.

(*v*) Any state or federally regulated affiliate or regulated subsidiary of any entity listed in subparagraphs (*i*) to (*iv*).

(*vi*) An insurance company authorized to do business in this state pursuant to the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

(*vii*) A motor vehicle sales finance company subject to the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141, with net assets in excess of $50,000,000.00.

(*viii*) A foreign bank.

(*ix*) A retirement fund regulated pursuant to state law or a pension fund regulated pursuant to federal law with net assets in excess of $50,000,000.00.

(*x*) A state or federal agency authorized by law to hold a security interest in real property or a local unit of government holding a reversionary interest in real property.

(*xi*) A nonprofit tax exempt organization created to promote economic development in which a majority of the organization's assets are held by a local unit of government.

(*xii*) Any other person who loans money for the purchase of or improvement of real property.

(*xiii*) Any person who retains or receives a security interest to service a debt or to secure a performance obligation.

(aa) "Local health department" means that term as defined in section 1105 of the public health code, 1978 PA 368, MCL 333.1105.

(bb) "Local unit of government" means a county, city, township, or village, an agency of a local unit of government, an authority or any other public body or entity created by or pursuant to state law. Local unit of government does not include this state or the federal government or a state or federal agency.

(cc) "Method detection limit" means the minimum concentration of a hazardous substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix that contains the analyte.

(dd) "Migrating NAPL" means that terms as it is defined in section 21302.

(ee) "Mobile NAPL" means that term as it is defined in section 21302.

(ff) "NAPL" means that term as it is defined in section 21303.

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(gg) "No further action letter" means a written response provided by the department under section 20114d confirming that a no further action report has been approved after review by the department.

(hh) "No further action report" means a report under section 20114d detailing the completion of remedial actions and including a postclosure plan and a postclosure agreement, if appropriate.

(ii) "Nonresidential" means that category of land use for parcels of property or portions of parcels of property that is not residential. This category of land use may include, but is not limited to, any of the following:

(*i*) Industrial, commercial, retail, office, and service uses.

(*ii*) Recreational properties that are not contiguous to residential property.

(*iii*) Hotels, hospitals, and campgrounds.

(*iv*) Natural areas such as woodlands, brushlands, grasslands, and wetlands.

(jj) "Operator" means a person who is in control of or responsible for the operation of a facility. Operator does not include either of the following:

(*i*) A person who holds indicia of ownership primarily to protect the person's security interest in the facility, unless that person participates in the management of the facility as described in section 20101a.

(*ii*) A person who is acting as a fiduciary in compliance with section 20101b.

(kk) "Owner" means a person who owns a facility. Owner does not include either of the following:

(*i*) A person who holds indicia of ownership primarily to protect the person's security interest in the facility, including, but not limited to, a vendor's interest under a recorded land contract, unless that person participates in the management of the facility as described in section 20101a.

(*ii*) A person who is acting as a fiduciary in compliance with section 20101b.

(*ll*) "Panel" means the response activity review panel created in section 20114e.

(mm) "Permitted release" means 1 or more of the following:

(*i*) A release in compliance with an applicable, legally enforceable permit issued under state law.

(*ii*) A lawful and authorized discharge into a permitted waste treatment facility.

(*iii*) A federally permitted release as defined in the comprehensive environmental response, compensation, and liability act, 42 USC 9601 to 9675.

(nn) "Postclosure agreement" means an agreement between the department and a person who has submitted a no further action report that prescribes, as appropriate, activities required to be undertaken upon completion of remedial actions as provided for in section 20114d.

(oo) "Postclosure plan" means a plan for land use or resource use restrictions or permanent markers at a facility upon completion of remedial actions as provided for in section 20114c.

(pp) "Release" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous substance into the environment, or the abandonment or discarding of barrels, containers, and other closed receptacles containing a hazardous substance. Release does not include any of the following:

(*i*) A release that results in exposure to persons solely within a workplace, with respect to a claim that these persons may assert against their employers.

(*ii*) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, or vessel.

(*iii*) A release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined in the atomic energy act of 1954, 42 USC 2011 to 2286i, if the release is subject to requirements with respect to financial protection established by the nuclear regulatory commission under 42 USC 2210, or any release of source by-product or special nuclear material from any processing site designated under 42 USC 7912(a)(1) or 42 USC 7942(a).

(*iv*) If applied according to label directions and according to generally accepted agricultural and management practices at the time of the application, the application of a fertilizer, soil conditioner, agronomically applied manure, or pesticide, or fruit, vegetable, or field crop residuals or processing by-products, aquatic plants, or a combination of these substances. As used in this subparagraph, fertilizer and soil conditioner have the meaning given to these terms in part 85, and pesticide has the meaning given to that term in part 83.

(*v*) Application of fruits, vegetables, field crop processing by-products, or aquatic plants to the land for an agricultural use or for use as an animal feed, if the use is consistent with generally accepted agricultural and management practices at the time of the application.

(*vi*) The relocation of soil under section 20120c.

(*vii*) The placement, storage, or use of beneficial use by-products or inert materials at the site of storage or use if in compliance with part 115.

(qq) "Remedial action" includes, but is not limited to, cleanup, removal, containment, isolation, destruction, or treatment of a hazardous substance released or threatened to be released into the environment,

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monitoring, maintenance, or the taking of other actions that may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, or to the environment.

(rr) "Remedial action plan" means a work plan for performing remedial action under this part.

(ss) "Residential" means that category of land use for parcels of property or portions of parcels of property where people live and sleep for significant periods of time such that the frequency of exposure is reasonably expected or foreseeable to meet the exposure assumptions used by the department to develop generic residential cleanup criteria as set forth in rules promulgated under this part. This category of land use may include, but is not limited to, homes and surrounding yards, condominiums, and apartments.

(tt) "Residential closure" means a property at which the contamination has been addressed in a no further action report that satisfies the limited residential cleanup criteria under section 20120a(1)(c) or the site-specific residential cleanup criteria under sections 20120a(2) and 20120b, that contains land use or resource use restrictions, and that is approved by the department or is considered approved by the department under section 20120d.

(uu) "Residual NAPL saturation" means that term as it is defined in part 213.

(vv) "Response activity" means evaluation, interim response activity, remedial action, demolition, providing an alternative water supply, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment or the natural resources. Response activity also includes health assessments or health effect studies carried out under the supervision, or with the approval of, the department of community health and enforcement actions related to any response activity.

(ww) "Response activity costs" or "costs of response activity" means all costs incurred in taking or conducting a response activity, including enforcement costs.

(xx) "Response activity plan" means a plan for undertaking response activities. A response activity plan may include 1 or more of the following:

(*i*) A plan to undertake interim response activities.

(*ii*) A plan for evaluation activities.

(*iii*) A feasibility study.

(*iv*) A remedial action plan.

(yy) "Security interest" means any interest, including a reversionary interest, in real property created or established for the purpose of securing a loan or other obligation. Security interests include, but are not limited to, mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, consignments, or any other transaction in which evidence of title is created if the transaction creates or establishes an interest in real property for the purpose of securing a loan or other obligation.

(zz) "Source" means any storage, handling, distribution, or processing equipment from which the release originates and first enters the environment.

(aaa) "Stamp sands" means finely grained crushed rock resulting from mining, milling, or smelting of copper ore and includes native substances contained within the crushed rock and any ancillary material associated with the crushed rock.

(bbb) "Target detection limit" means the detection limit for a hazardous substance in a given environmental medium that is specified by the department on a list that it publishes not more than once a year. The department shall identify 1 or more analytical methods, when a method is available, that are judged to be capable of achieving the target detection limit for a hazardous substance in a given environmental medium. The target detection limit for a given hazardous substance is greater than or equal to the method detection limit for that hazardous substance. In establishing a target detection limit, the department shall consider the following factors:

(*i*) The low level capabilities of methods published by government agencies.

(*ii*) Reported method detection limits published by state laboratories.

(*iii*) Reported method detection limits published by commercial laboratories.

(*iv*) The need to be able to measure a hazardous substance at concentrations at or below cleanup criteria.

(ccc) "Threatened release" or "threat of release" means any circumstance that may reasonably be anticipated to cause a release.

(ddd) "Venting groundwater" means groundwater that is entering a surface water of this state from a facility.

(2) As used in this part:

(a) The phrase "a person who is liable" includes a person who is described as being subject to liability in section 20126. The phrase "a person who is liable" does not presume that liability has been adjudicated.

(b) The phrase "this part" includes "rules promulgated under this part".

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History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 1995, Act 117, Imd. Eff. June 29, 1995;—Am. 1996, Act 115, Imd. Eff. Mar. 6, 1996;—Am. 1996, Act 380, Imd. Eff. July 24, 1996;—Am. 1996, Act 383, Imd. Eff. July 24, 1996;—Am. 2010, Act 229, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2013, Act 141, Imd. Eff. Oct. 22, 2013;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2014, Act 258, Eff. Mar. 31, 2015;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20101a Participation in management of facility by lender; "workout" defined.

Sec. 20101a. (1) For purposes of this part, a lender holding a security interest in a facility participates in the management of the facility if that lender engages in acts of facility management that constitute actual participation in the management or operational affairs of a facility and that exceed the mere capacity to influence, or ability to influence, or the unexercised right to control facility operations. A lender holding a security interest is participating in the management of a facility, while the borrower is still in possession of the facility encumbered by the security interest, if the lender holding a security interest does any of the following:

(a) Exercises decision making control over the borrower's environmental compliance.

(b) Undertakes responsibility for the borrower's hazardous substance handling or disposal practices.

(c) Exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise with respect to either or both of the following:

(*i*) Environmental compliance.

(*ii*) All, or substantially all, of the operational aspects of the enterprise other than environmental compliance. As used in this subparagraph, "operational aspects of the enterprise" includes functions such as that of facility or plant manager, operations manager, chief operating officer, or chief executive officer. Operational aspects of the enterprise do not include the financial or administrative aspects of the enterprise such as that of credit manager, accounts payable or receivable manager, personnel manager, controller, chief financial officer, or similar functions.

(2) For purposes of this part, the following do not constitute participation in the management of a facility by a lender holding a security interest in the facility:

(a) The mere capacity to influence, or ability to influence, or the unexercised right to control facility operations.

(b) An act or omission prior to the time that indicia of ownership are held primarily to protect a security interest.

(c) Undertaking or requiring an environmental inspection of the facility in which indicia of ownership are to be held, or requiring a prospective borrower to undertake response activities at a facility or to comply or come into compliance, whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest, with any applicable law, rule, or regulation.

(d) Actions that are consistent with holding ownership indicia primarily to protect a security interest. The authority of the lender holding a security interest to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations, or promises from the borrower. Loan policing and workout activities cover and include all activities up to foreclosure and its equivalents.

(e) Engaging in policing activities prior to foreclosure if the lender holding a security interest does not by such actions participate in the management of the facility as described in subsection (1)(a) to (c). Permissible actions include, but are not limited to, requiring the borrower to undertake response activities at the facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest; and securing or exercising authority to monitor or inspect the facility in which indicia of ownership are maintained, including on-site inspections, or the borrower's business or financial condition, during the term of the security interest. A lender holding a security interest that engages in workout activities prior to foreclosure and its equivalents will remain within the exemption if the lender holding a security interest does not by such action participate in the management of the facility.

(3) As used in this section, "workout" refers to those actions by which a lender holding a security interest, at any time prior to foreclosure or its equivalent, seeks to prevent, cure, or mitigate a default by the borrower or obligor or to preserve, or prevent the diminution of, the value of the security. Workout activities include, but are not limited to, restructuring or renegotiating the terms of the security interest; requiring payment of

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additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; and providing specific or general financial or other advice, suggestions, counseling, or guidance.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20101b Liability of lender as fiduciary or representative for disabled person; responsibilities.

Sec. 20101b. (1) A lender or other person who has not participated in the management of a property as described in section 20101a before assuming ownership or control of the property as a fiduciary, as defined by section 1104 of the estates and protected individuals code, 1998 PA 386, MCL 700.1104, or in a representative capacity for a disabled person under section 5501 of the estates and protected individuals code, 1998 PA 386, MCL 700.5501, and that is acting or has acted in a capacity permitted by the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, is not personally liable as an owner or operator of the property under this part. This subsection does not do either of the following:

(a) Relieve the fiduciary from personal liability as the result of the fiduciary's assumption of personal liability, or negligence, gross negligence, or reckless, willful, or intentional misconduct.

(b) Prevent a claim against the assets that are part of or all of the estate or trust that contains the facility; another estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility that is administered by the lender or other person; or another estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility. Such a claim may be asserted against the fiduciary in its representative capacity, whether or not the fiduciary is personally liable.

(2) A lender that has not participated in the management of a property as described in section 20101a before assuming ownership or control of the property in a fiduciary capacity, and under a fiduciary agreement entered into on or before August 1, 1990 owns or controls the property in a fiduciary capacity that is authorized by the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105, or the national bank act, chapter 106, 13 Stat. 99, is not personally liable as an owner or operator of the property under this part. This subsection does not do either of the following:

(a) Relieve the fiduciary from personal liability as the result of the fiduciary's assumption of personal liability, negligence, gross negligence, or reckless, willful, or intentional misconduct.

(b) Prevent a claim against the assets that are part of or all of the estate or trust that contains the facility; another estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility that is administered by the lender; or another estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility. Such a claim may be asserted against the fiduciary in its representative capacity, whether or not the fiduciary is personally liable.

(3) A lender that has not participated in the management of a property as described in section 20101a before assuming ownership or control of the property in a fiduciary capacity, and under a fiduciary agreement entered into after August 1, 1990 owns or controls the property in a fiduciary capacity that is authorized by the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105, or the national bank act, chapter 106, 13 Stat. 99, that has served only in an administrative, custodial, or financial capacity with respect to the property, and has not exercised sufficient involvement to control the owner's or operator's handling of a hazardous substance, is not personally liable as an owner or operator of the property under this part. This subsection does not do either of the following:

(a) Relieve the fiduciary from personal liability as the result of the fiduciary's assumption of personal liability, negligence, gross negligence, or reckless, willful, or intentional misconduct.

(b) Prevent a claim against the assets that are part of or all of the estate or trust that contains the facility; another estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility that is administered by the lender; or another estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility. Such a claim may be asserted against the fiduciary in its representative capacity, whether or not the fiduciary is personally liable.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2000, Act 65, Eff. Apr. 1, 2000;—Am. 2000, Act 368, Imd. Eff. Jan. 2, 2001.

Popular name: Act 451

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Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20101c Property with deposit of stamp sands; regulation.

Sec. 20101c. Property onto which stamp sands have been deposited is not subject to regulation under this part unless the property otherwise contains hazardous substances in excess of the concentrations that satisfy cleanup criteria for unrestricted residential use.

History: Add. 2014, Act 258, Eff. Mar. 31, 2015;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20102 Legislative finding and declaration.

Sec. 20102. The legislature hereby finds and declares:

(a) That there exist in this state certain facilities containing hazardous substances that pose a danger to the public health, safety, or welfare, or to the environment of this state.

(b) That there is a need to provide for a method of eliminating the danger of environmental contamination caused by the existence of hazardous substances at facilities within the state.

(c) That it is the purpose of this part to provide for appropriate response activity to eliminate unacceptable risks to public health, safety, or welfare, or to the environment from environmental contamination at facilities within the state.

(d) That there is a need for additional administrative and judicial remedies to supplement existing statutory and common law remedies.

(e) That the responsibility for the cost of response activities pertaining to a release or threat of release and repairing injury, destruction, or loss to natural resources caused by a release or threat of release should not be placed upon the public except when funds cannot be collected from, or a response activity cannot be undertaken by, a person liable under this part.

(f) That liability for response activities to address environmental contamination should be imposed upon those persons who are responsible for the environmental contamination.

(g) That to the extent possible, consistent with requirements under this part and rules promulgated under this part, response activities shall be undertaken by persons liable under this part.

(h) That this part is intended to provide remedies for facilities posing any threat to the public health, safety, or welfare, or to the environment, regardless of whether the release or threat of release of a hazardous substance occurred before or after October 13, 1982, the effective date of the former environmental response act, Act No. 307 of the Public Acts of 1982, and for this purpose this part shall be given retroactive application. However, criminal and civil penalties provided in this part shall apply to violations of this part that occur after July 1, 1991.

(i) That a facility that is owned by the federal government, the state, or a local unit of government, or a facility where a release or threat of release is caused by the federal government, the state, or a local unit of government, should not be treated differently in terms of the expenditure of money for response activities than any facility.

(j) That if a person who is liable under section 20126 is the state or a local unit of government, this part should be enforced by the attorney general and the department in the same manner as it would be for any other person who is liable under section 20126.

(k) That this part is not intended to impose penalties or exemplary damages upon parties conducting response activities pursuant to a decree or order to which the United States is a party.

(*l*) That this part is intended to foster the redevelopment and reuse of vacant manufacturing facilities and abandoned industrial sites that have economic development potential, if that redevelopment or reuse assures the protection of the public health, safety, welfare, and the environment.

(m) That it is the intent of the legislature that, in implementing this part, the department shall act reasonably in its exercise of professional judgment.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

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Popular name: NREPA

324.20102a Applicability of provisions in effect on May 1, 1995 to certain actions; incorporation by reference; approval of changes in response activity plan.

Sec. 20102a. (1) Notwithstanding any other provision of this part, the following actions shall be governed by the provisions of this part that were in effect on May 1, 1995:

(a) Any judicial action or claim in bankruptcy that was initiated by any person on or before May 1, 1995 under this part.

(b) An administrative order that was issued on or before May 1, 1995 pursuant to section 20119.

(c) An enforceable agreement with the state entered into on or before May 1, 1995 by any person under this part.

(2) For purposes of this section, the provisions of this part that were in effect on May 1, 1995 are hereby incorporated by reference.

(3) Notwithstanding subsection (1), upon request of a person implementing response activity, the department shall approve changes in a plan for response activity to be consistent with sections 20118 and 20120a.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20103 Federal assistance.

Sec. 20103. The department shall seek federal assistance for response activities required at facilities in this state.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20104 Coordination of activities; rules; guideline, bulletin, interpretive statement, or operational memorandum not binding on person; damages; use of nonuse valuation methods; applicability of provisions to certain bankruptcy actions or claims.

Sec. 20104. (1) The department shall coordinate all activities required under this part and may promulgate rules necessary to implement this part.

(2) A guideline, bulletin, interpretive statement, or operational memorandum under this part shall not be given the force and effect of law. A guideline, bulletin, interpretive statement, or operational memorandum under this part is not legally binding on any person.

(3) Claims for natural resource damages may be pursued only in accordance with principles of scientific and economic validity and reliability. Contingent nonuse valuation methods or similar nonuse valuation methods shall not be utilized and damages shall not be recovered for nonuse values unless and until rules are promulgated that establish an appropriate means of determining such damages.

(4) A contingent nonuse valuation method or similar nonuse valuation method shall not be utilized for natural resource damage calculations unless a determination is made by the department that such a method satisfies principles of scientific and economic validity and reliability and rules for utilizing a contingent nonuse valuation method or a similar nonuse valuation method are subsequently promulgated.

(5) The provisions in this section related to natural resource damages as added by 1995 PA 71 do not apply to any judicial or administrative action or claim in bankruptcy initiated on or before March 1, 1995.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 229, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

Administrative rules: R 299.5101 et seq. and R 299.51001 et seq. of the Michigan Administrative Code.

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324.20104a Brownfield redevelopment board; creation; membership; quorum; business conducted at public meeting; writings subject to freedom of information act; duties and responsibilities.

Sec. 20104a. (1) The brownfield redevelopment board is created within the department.

(2) The board shall consist of the following members:

(a) The director or his or her designee.

(b) The director of the department of technology, management, and budget or his or her designee.

(c) The chief executive officer of the Michigan economic development corporation or his or her designee.

(3) A majority of the members of the board constitute a quorum for the transaction of business at a meeting of the board.

(4) The business which the board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(5) A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(6) The board shall implement the duties and responsibilities as provided in this part and as otherwise provided by law.

History: Add. 1996, Act 383, Imd. Eff. July 24, 1996;—Am. 2010, Act 229, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

Compiler's note: For transfer of a position on Brownfield redevelopment board designated for the chief executive officer of Michigan jobs commission to the director of department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

324.20105 Repealed. 2010, Act 228, Imd. Eff. Dec. 14, 2010.

Compiler's note: The repealed section pertained to duties of department upon discovery of contaminated site, inclusion of site on list, notification of inclusion on site, and removal of property from list.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20105a Sites receiving state funds to conduct response activities; compilation, arrangement, and submission of list.

Sec. 20105a. The department shall annually compile a list of sites that are receiving state funds to conduct response activities. This list shall be arranged in alphabetical order. The department shall annually submit this list to the legislature.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20106 Level of funding; recommendation of governor.

Sec. 20106. (1) The governor shall include in his or her annual budget recommendations to the legislature a recommended level of funding to provide for the activities necessary to implement this part.

(2) The governor's recommendations under this section shall be accompanied by a site specific description of the extent of known or suspected environmental contamination, the recommended response activities to be undertaken, and an estimate of cost of those response activities.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20107 Tearing down, removing, or destroying sign or notice as misdemeanor; penalty.

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Sec. 20107. A person who willfully tears down, removes, or destroys any sign or notice warning of the presence of hazardous substances or marking boundaries of a facility subject to response activity under this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20107a Duties of owner or operator having knowledge of facility; hazardous substances; obligations based on current numeric cleanup or site-specific criteria; liability for costs and damages; compliance with section; applicability of subsection (1)(a) to (c) to state or local unit of government; "express public purpose" explained.

Sec. 20107a. (1) A person who owns or operates property that he or she has knowledge is a facility shall do all of the following with respect to hazardous substances at the facility:

(a) Undertake measures as are necessary to prevent exacerbation.

(b) Exercise due care by undertaking response activity necessary to mitigate unacceptable exposure to hazardous substances, mitigate fire and explosion hazards due to hazardous substances, and allow for the intended use of the facility in a manner that protects the public health and safety.

(c) Take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that foreseeably could result from those acts or omissions.

(d) Provide reasonable cooperation, assistance, and access to the persons that are authorized to conduct response activities at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response activity at the facility. Nothing in this subdivision shall be interpreted to provide any right of access not expressly authorized by law, including access authorized pursuant to a warrant or a court order, or to preclude access allowed pursuant to a voluntary agreement.

(e) Comply with any land use or resource use restrictions established or relied on in connection with the response activities at the facility.

(f) Not impede the effectiveness or integrity of any land use or resource use restriction employed at the facility in connection with response activities.

(2) The owner's or operator's obligations under this section shall be based upon the current numeric cleanup criteria under section 20120a(1) or site-specific criteria approved under section 20120b.

(3) A person who violates subsection (1) who is not otherwise liable under this part for the release at the facility is liable for response activity costs and natural resource damages attributable to any exacerbation and any fines or penalties imposed under this part resulting from the violation of subsection (1) but is not liable for performance of additional response activities unless the person is otherwise liable under this part for performance of additional response activities. The burden of proof in a dispute as to what constitutes exacerbation shall be borne by the party seeking relief.

(4) Compliance with this section does not satisfy a person's obligation to perform response activities as otherwise required under this part.

(5) Subsection (1)(a) to (c) does not apply to the state or to a local unit of government that is not liable under section 20126(1)(c) or (3)(a), (b), (c), or (e) or to the state or a local unit of government that acquired property by purchase, gift, transfer, or condemnation prior to June 5, 1995 or to a person who is exempt from liability under section 20126(4)(c). However, if the state or local unit of government, acting as the operator of a parcel of property that the state or local unit of government has knowledge is a facility, offers access to that parcel on a regular or continuous basis pursuant to an express public purpose and invites the general public to use that property for the express public purpose, the state or local unit of government is subject to this section but only with respect to that portion of the facility that is opened to and used by the general public for that express purpose, and not the entire facility. Express public purpose includes, but is not limited to, activities such as a public park, municipal office building, or municipal public works operation. Express public purpose does not include activities surrounding the acquisition or compilation of parcels for the purpose of future development.

(6) Subsection (1)(a) to (c) does not apply to a person who is exempt from liability under section 20126(3)(c) or (d) except with regard to that person's activities at the facility.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 1996, Act 115, Imd. Eff. Mar. 6, 1996;—Am. 1996, Act 380, Imd. Eff.

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July 24, 1996;—Am. 1996, Act 383, Imd. Eff. July 24, 1996;—Am. 2010, Act 233, Imd. Eff. Dec. 14, 2010;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20108 Cleanup and redevelopment fund; creation; deposit of assets into fund; subaccounts; unexpended balance to be carried forward.

Sec. 20108. (1) The cleanup and redevelopment fund is created in the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) In addition to the money received under subsection (2), the fund shall receive as revenue money collected by the attorney general in actions filed under this part, collected by the state under this part, or collected by a person under section 20135(2). Money collected and placed into the fund under this subsection may be earmarked by the department for use at specific sites.

(4) The state treasurer may establish subaccounts within the fund, and shall establish a subaccount for all money in the former environmental response fund on the effective date of the 1996 amendments to this section. Proceeds of all cost recovery actions taken and settlements entered into pursuant to this part, excluding natural resource damages, by the department or the attorney general, or both, shall be credited to this subaccount.

(5) An unexpended balance within the fund at the close of the fiscal year shall be carried forward to the following fiscal year.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 380, Imd. Eff. July 24, 1996.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20108a Revitalization revolving loan fund; creation; deposit of assets into fund; investment; interest and earnings; carrying forward unexpended balance; lump-sum appropriation; expenditure.

Sec. 20108a. (1) The revitalization revolving loan fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the revitalization revolving loan fund. The state treasurer shall direct the investment of the revitalization revolving loan fund. The state treasurer shall credit to the revitalization revolving loan fund interest and earnings from revitalization revolving loan fund investments.

(3) An unexpended balance within the revitalization revolving loan fund at the close of the fiscal year shall be carried forward to the following fiscal year.

(4) The department shall annually submit to the governor a request for a lump-sum appropriation from the revitalization revolving loan fund for loans pursuant to the revitalization revolving loan program under section 20108b.

(5) The department shall expend money from the revitalization revolving loan fund, upon appropriation, only for the revitalization loan program created in section 20108b.

History: Add. 1996, Act 380, Imd. Eff. July 24, 1996.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20108b Revitalization revolving loan program.

Sec. 20108b. (1) The department shall create a revitalization revolving loan program for the purpose of making loans to certain local units of government to provide for eligible activities at certain properties in order to promote economic redevelopment.

(2) To be eligible for a loan, applications must meet the following requirements:

(a) The applicant is a county, city, township, or village, or an authority established pursuant to the

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brownfield redevelopment financing act, if the municipality that created the authority pursuant to the brownfield redevelopment financing act commits to secure the loan with a pledge of the municipality's full faith and credit.

(b) The application is for eligible activities at a property within the applicant's jurisdiction that is a facility or is suspected to be a facility based on current or historic use.

(c) The application is complete and submitted on a form provided by the department.

(d) The application is received by the deadline established by the department.

(e) The application is for eligible activities only as provided for in subsection (3).

(3) Eligible activities are limited to evaluation and demolition at the property or properties in an area-wide zone, and interim response activities required to facilitate evaluation and demolition conducted prior to redevelopment of a property or properties in an area-wide zone. Eligible activities include only those necessary to facilitate redevelopment. Eligible activities do not include activities necessary only to design or complete a remedial action that fully complies with the requirements of section 20120a. All eligible activities must be consistent with a work plan or response activity plan approved in advance by the department under this part or pursuant to section 15 of the brownfield redevelopment financing act, MCL 125.2665. Unless otherwise approved by the director, only activities carried out and costs incurred after execution of a loan agreement are eligible.

(4) The department shall provide for at least 1 application cycle per fiscal year. Prior to each application cycle, the department shall develop written instructions for prospective applicants including the criteria that will be used in application review and approval.

(5) Final application decisions shall be made by the department within 4 months of the application deadline.

(6) A complete application shall include the following:

(a) A description of the proposed eligible activities.

(b) An itemized budget for the proposed eligible activities.

(c) A schedule for the completion of the proposed eligible activities.

(d) Location of the property.

(e) Current ownership and ownership history of the property.

(f) Current use of the property.

(g) A detailed history of the use of the property.

(h) Existing and proposed future zoning of the property.

(i) If the property is not owned by the applicant, a draft of an enforceable agreement between the property owner and the applicant that commits the property owner to cooperate with the applicant, including a commitment to allow access to the property to complete at a minimum the proposed activities.

(j) A description of the property's economic redevelopment potential.

(k) A resolution from the local governing body of the applicant committing to repayment of the loan according to the terms of this section.

(*l*) Other information as specified by the department in its written instructions.

(7) To receive loan funds, approved applicants shall enter into a loan agreement with the department. At a minimum, the loan agreement shall contain all of the following:

(a) The approved eligible activities to be undertaken with loan funds.

(b) The loan interest rate, terms, and repayment schedule as determined by the department pursuant to subsection (10).

(c) A commitment that the loan is secured by a full faith and credit pledge of the applicant, or if the applicant is an authority established pursuant to the brownfield redevelopment financing act, the commitment shall be from the municipality that created the authority pursuant to that act.

(d) An implementation schedule.

(e) Reporting requirements, including at a minimum the following:

(*i*) The recipient shall submit a progress status report to the department every 6 months during the implementation schedule.

(*ii*) The recipient shall provide a final report within 3 months of completion of the loan funded activities that includes documentation of project costs and expenditures, including invoices and proof of payment.

(f) If the property is not owned by the recipient, an executed agreement that has been approved by the department that meets the requirements of subsection (6)(i).

(g) Other provisions as considered appropriate by the department.

(8) If an approved applicant fails to sign a loan agreement within 90 days of a written loan offer by the department, the department may cancel the loan offer. The applicant may not appeal or contest a cancellation pursuant to this subsection.

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(9) The department may terminate a loan agreement and require immediate repayment of the loan if the recipient uses loan funds for any purpose other than for the approved eligible activities specified in the loan agreement. The department shall provide written notice 30 days prior to the termination.

(10) Subject to subsection (11), loans shall have the following terms:

(a) A loan interest rate of not more than 50% of the prime rate as determined by the department as of the date of approval of the loan.

(b) Loan recipients shall repay loans in equal annual installments of principal and interest beginning not later than 5 years after the first draw of the loan and concluding not later than 15 years after the first draw of the loan.

(11) Upon request of a loan recipient and a showing of financial hardship related to the project that was financed in whole or in part by the loan, the department may renegotiate the terms of any outstanding loan, including the length of the loan, the interest rate, and the repayment terms.

(12) Loan payments and interest shall be deposited back into the revitalization revolving loan fund created in section 20108a.

(13) Upon default of a loan, as determined by the department, or upon the request of the loan recipient as a method to repay the loan, the department of treasury shall withhold state payments from the loan recipient in amounts consistent with the repayment schedule in the loan agreement until the loan is repaid. The department of treasury shall deposit these withheld funds into the revitalization revolving loan fund created in section 20108a until the loan is repaid.

(14) As used in this section, "brownfield redevelopment financing act" means 1996 PA 381, MCL 125.2651 to 125.2672.

History: Add. 1996, Act 383, Imd. Eff. July 24, 1996;—Am. 2010, Act 233, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20108c State site cleanup fund; creation; deposit of assets into fund; investment; interest and earnings; money remaining in fund; lapse; use of money; state sites cleanup program; establishment; purpose; expenditure; list of facilities with state liability; prioritized list; payment for necessary response activities; carrying forward unexpended funds; compliance with MCL 18.1451; report.

Sec. 20108c. (1) The state site cleanup fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the state site cleanup fund. The state treasurer shall direct the investment of the state site cleanup fund. The state treasurer shall credit to the state site cleanup fund interest and earnings from fund investments.

(3) Money in the state site cleanup fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) Money in the state site cleanup fund shall be used for the state sites cleanup program established under this section.

(5) The department shall establish a state sites cleanup program for the purpose of expending money in the state sites cleanup fund, including the $20,000,000.00 appropriated by the legislature for state site cleanup pursuant to Act No. 265 of the Public Acts of 1994.

(6) The department shall expend money appropriated for state site cleanup only for response activities at facilities where the state is liable as an owner or operator under section 20126 or where the state has licensure or decommissioning obligations as an owner or possessor of radioactive materials that are regulated by the nuclear regulatory commission. Money expended for the state sites cleanup program shall not be used to pay fines, penalties, or damages.

(7) Six months after the effective date of this section, and annually thereafter by October 1 of each year, each state executive department and agency shall provide to the department a detailed list of all facilities where the state executive department or agency is liable as an owner or operator under section 20126. Subsequent lists do not need to include facilities identified in a previous list. This list shall include the following information for each facility:

(a) The facility name.

(b) Location.

(c) Use history of the facility.

(d) A detailed summary of available information regarding the source, nature, and extent of the

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contamination at the facility.

(e) A detailed summary of available information on any public health or environmental impacts at the facility.

(f) A detailed summary of available information on the resale and redevelopment potential of the facility.

(g) A description of and estimated cost of the response activities needed at the facility, if known.

(8) Within 12 months after the effective date of this section and by February 1 of each year thereafter, the board shall develop a prioritized list of the facilities identified pursuant to subsection (3). Sites posing the greatest risk to the public health, safety, welfare, or the environment and those having high resale and redevelopment potential shall be given the highest priority. The list shall include the following information for each facility:

(a) The facility's priority order.

(b) Response activities to be completed at the facility.

(c) Estimated cost of the response activities.

(d) The state executive department or agency that is liable as an owner or operator under section 20126.

(9) All state executive departments and agencies that are liable as an owner or operator under section 20126 are responsible for undertaking and paying for all necessary response activities that cannot be addressed with money appropriated to the department for state site cleanup as described in subsection (1) or any money appropriated to the department specifically for the purpose of response activities at facilities for which the state is liable as an owner or operator. The existence of these funds does not affect the liability of any person under this part or any state or federal law.

(10) The $20,000,000.00 appropriated pursuant to Act No. 265 of the Public Acts of 1994 and to be expended pursuant to this section shall carry over to succeeding fiscal years. The unexpended portion of the appropriation is considered a work project appropriation, and any unencumbered or unallotted funds are carried forward to the succeeding fiscal year. The following is in compliance with section 451(3) of the management and budget act, Act No. 431 of the Public Acts of 1984, being section 18.1451 of the Michigan Compiled Laws:

(a) The purpose of the project to be carried forward is to provide for contaminated site cleanups.

(b) The project will be accomplished by contracts.

(c) The total estimated cost of the project will be $20,000,000.00.

(d) The tentative completion date is September 30, 1999.

(11) The department shall submit an annual report to the governor and the legislature on the status of the response activities being conducted with money appropriated to the department to implement this section and the need for additional funds to conduct future response activities.

History: Add. 1996, Act 380, Imd. Eff. July 24, 1996.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20109 Repealed. 1996, Act 380, Imd. Eff. July 24, 1996.

Compiler's note: The repealed section pertained to Michigan unclaimed bottle fund.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20109a Repealed. 2010, Act 228, Imd. Eff. Dec. 14, 2010.

Compiler's note: The repealed section pertained to municipal landfill cost share grant program.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20110, 324.20111 Repealed. 1996, Act 380, Imd. Eff. July 24, 1996.

Compiler's note: The repealed sections pertained to long-term maintenance trust fund board and long-term maintenance trust fund.

Popular name: Act 451

Popular name: Environmental Remediation

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Popular name: Environmental Response Act

Popular name: NREPA

324.20112 Repealed. 1995, Act 71, Imd. Eff. June 5, 1995.

Compiler's note: The repealed section pertained to study of cleanup costs.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20112a Inventory of residential closures; creation and update; compilation of data; no further action reports.

Sec. 20112a. (1) Subject to subsection (3), the department shall create, and update on an ongoing basis, an inventory of residential closures and a separate inventory of other known facilities. Each inventory shall contain, if applicable, at least the following information for each facility:

(a) Location.

(b) Whether 1 or more response activity plans were submitted under section 20114b and the status of department approval.

(c) Whether a notice of land use or resource use restrictions under section 20114c was submitted to the department.

(d) Whether a no further action report under section 20114d was submitted to the department and whether the report included a postclosure plan or proposed postclosure agreement and the status of department approval.

(2) The department may categorize facilities on the inventory created under subsection (1) in a manner that the department believes is useful for the general public.

(3) The department shall create and update on an ongoing basis a separate inventory of residential closures.

(4) The department shall post the inventories created under subsections (1) and (2) on the department's website.

(5) The department shall compile the following data on a quarterly basis and post the data on its website:

(a) The number of response activity plans received by the department and itemized as follows:

(*i*) Approved by the department.

(*ii*) Disapproved by the department.

(*iii*) Recommended for approval by the panel.

(*iv*) Recommended for disapproval by the panel.

(*v*) Approved by operation of law under section 20114b.

(b) The number of no further action reports received by the department and itemized as follows:

(*i*) Approved by the department.

(*ii*) Disapproved by the department.

(*iii*) Recommended for approval by the panel.

(*iv*) Recommended for disapproval by the panel.

(*v*) Approved by operation of law.

(c) The number of baseline environmental assessments received by the department.

(6) The department shall annually determine the percentage of no further action reports approved by operation of law under section 20114d. If the percentage in any year is in excess of 10%, the department shall notify the standing committees of the senate and the house of representatives with jurisdiction over issues related to natural resources and the environment of this occurrence.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 234, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20112b Releases associated with clandestine drug laboratories; report.

Sec. 20112b. Not more than 12 months after the effective date of the amendatory act that added this section and biennially after that, the department shall report to the standing committees of the legislature with jurisdiction over issues pertaining to natural resources and the environment on environmental contamination caused by releases that are associated with clandestine drug laboratories, that have been reported to the

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department, and that are subject to response activity under this part. The report shall include all of the following:

(a) The number of releases described in this section.

(b) The status of the responses to those releases.

(c) The identity of the entity or department that undertook the response activity.

History: Add. 2006, Act 265, Imd. Eff. July 6, 2006.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20113 Appropriation; purposes; request to governor; list of facilities; use of fund; expenditures; limitation; providing list of projects to governor and legislative committees; "urbanized area" defined.

Sec. 20113. (1) Money required to implement the programs described under this part and to pay for response activities recommended under this part shall be appropriated from the fund and any other source the legislature considers necessary to implement the requirements of this part.

(2) The department shall annually submit to the governor a request for appropriation from the fund. The request will include a lump sum amount for the purposes of subsection (3)(e). For the purposes set forth in subsection (3)(a), (b), (c), and (d), the request shall include a list of facilities where the department is proposing to expend funds. The list shall include the following information for each facility: the common name of the facility, the response activities that are planned to be conducted, and the estimated amount of money that is needed to conduct the response activities. The legislature shall approve by law the list of facilities to be addressed and shall provide a lump sum appropriation for these sites based on the total estimated amount needed for the approved facilities.

(3) Money from the fund may be used, upon appropriation, for the following as determined by the department:

(a) Superfund match, which includes funding for any response activity that is required to match federal dollars at a superfund site as required under the comprehensive environmental response, compensation, and liability act, 42 USC 9601 to 9675.

(b) Response activities to address actual or potential public health or environmental problems.

(c) Completion of response activities initiated by the state using environmental protection bond funds or completion of response activities at facilities initiated by a person who was liable under this part prior to 1995 PA 71 but is not liable under section 20126 of this part, where such response activities have ceased.

(d) Response activities at facilities that will facilitate redevelopment.

(e) Emergency response actions for facilities to be determined by the department.

(4) Money in the fund shall be expended first for the purposes described in subsection (3)(a) and (e) and health or environmental problems under subsection (3)(b) that are related to acute health or environmental problems. Following these expenditures, not less than 50% of the remaining money expended under this section shall be expended for response activities that facilitate redevelopment of urbanized areas. All additional expenditures under this section shall be expended following the expenditures described in this subsection. As used in this subsection, "urbanized area" means an urbanized area as determined by the economics and statistics administration, United States bureau of census, according to the 2000 census.

(5) Not later than April 1 of each year, the department shall provide to the governor, the senate and house of representatives standing committees with jurisdiction over issues pertaining to natural resources and the environment, and the senate and house of representatives appropriations committees a list of all projects financed under this part through the preceding fiscal year. The list shall include the project site and location, the nature of the project, the total amount of money authorized, the total amount of money expended, and project status.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 1996, Act 380, Imd. Eff. July 24, 1996;—Am. 1996, Act 383, Imd. Eff. July 24, 1996;—Am. 2010, Act 234, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20114 Owner or operator of facility; duties; response activity without prior approval;

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easement; applicability of subsections (1) and (3); effect of section on authority of department to conduct response activities or on liability of certain persons; determination of nature and extent of hazardous substance; "available analytical method" defined.

Sec. 20114. (1) Except as provided in subsection (4), an owner or operator of property who has knowledge that the property is a facility shall do all of the following with respect to a release for which the owner or operator is liable under section 20126:

(a) Subject to subsection (6), determine the nature and extent of the release at the facility.

(b) Make the following notifications:

(*i*) If the release is of a reportable quantity of a hazardous substance under 40 CFR 302.4 and 302.6 (July 1, 2012 edition), report the release to the department within 24 hours after obtaining knowledge of the release.

(*ii*) If the owner or operator has reason to believe that 1 or more hazardous substances are emanating from or have emanated from and are present beyond the boundary of his or her property at a concentration in excess of cleanup criteria for unrestricted residential use, notify the department and the owners of property where the hazardous substances are present within 30 days after obtaining knowledge that the release has migrated.

(*iii*) If the release is a result of an activity that is subject to permitting under part 615 and the owner or operator is not the owner of the surface property and the release results in hazardous substance concentrations in excess of cleanup criteria for unrestricted residential use, notify the department and the surface owner within 30 days after obtaining knowledge of the release.

(c) Immediately stop or prevent an ongoing release at the source.

(d) Immediately implement measures to address, remove, or contain hazardous substances that are released after June 5, 1995 if those measures are technically practical, are cost effective, and abate an unacceptable risk to the public health, safety, or welfare or the environment. At a facility where hazardous substances are released after June 5, 1995, and those hazardous substances have not affected groundwater but are likely to, groundwater contamination shall be prevented if it can be prevented by measures that are technically practical, cost effective, and abate an unacceptable risk to the public health, safety, or welfare or the environment.

(e) Immediately identify and eliminate any threat of fire or explosion or any direct contact hazards.

(f) Initiate a remedial action that is necessary and feasible to address unacceptable risks associated with residual NAPL saturation, migrating NAPL, and mobile NAPL using best practices for managing NAPL, including, but not limited to, best practices developed by the American society for testing and materials or the interstate technology and regulatory council.

(g) Diligently pursue response activities necessary to achieve the cleanup criteria established under this part. Except as otherwise provided in this part, in pursuing response activities under this subdivision, the owner or operator may do either of the following:

(*i*) Proceed under section 20114a to conduct self-implemented response activities.

(*ii*) Proceed under section 20114b if the owner or operator wishes to, or is required to, obtain departmental approval of 1 or more aspects of planning response activities.

(h) Upon written request by the department, take 1 or more of the following actions:

(*i*) Provide a response activity plan containing a plan for undertaking interim response activities and undertake interim response activities consistent with that plan.

(*ii*) Provide a response activity plan containing a plan for undertaking evaluation activities and undertake evaluation activities consistent with that plan.

(*iii*) Pursue remedial actions under section 20114a and, upon completion, submit a no further action report under section 20114d.

(*iv*) Take any other response activity determined by the department to be technically sound and necessary to protect the public health, safety, welfare, or the environment.

(*v*) Submit to the department for approval a response activity plan containing a remedial action plan that, when implemented, will achieve the cleanup criteria established under this part.

(*vi*) Implement an approved response activity plan in accordance with a schedule approved by the department pursuant to this part.

(*vii*) Submit a no further action report under section 20114d after completion of remedial action.

(2) Subsection (1) does not preclude a person from simultaneously undertaking 1 or more aspects of planning or implementing response activities at a facility under section 20114a without the prior approval of the department, unless 1 or more response activities are being conducted pursuant to an administrative order or agreement or judicial decree that requires prior department approval, and submitting a response activity plan to the department under section 20114b.

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(3) Except as provided in subsection (4), a person who holds an easement interest in a portion of a property who has knowledge that there may be a release within that easement shall report the release to the department within 24 hours after obtaining knowledge of the release. This subsection applies to reportable quantities of hazardous substances established pursuant to 40 CFR 302.4 and 302.6 (July 1, 2012 edition).

(4) The requirements of subsections (1) and (3) do not apply to a permitted release or a release in compliance with applicable federal, state, and local air pollution control laws.

(5) This section does not do either of the following:

(a) Limit the authority of the department to take or conduct response activities pursuant to this part.

(b) Limit the liability of a person who is liable under section 20126.

(6) If a hazardous substance is released at a property and there is no available analytical method or generic cleanup criteria for that hazardous substance, the nature and extent of the hazardous substance may be determined by any of the following means, singly or in combination:

(a) If another hazardous substance with an available analytical method was released at the same location and has similar fate and mobility characteristics, determine the nature and extent of that hazardous substance as a surrogate.

(b) For venting groundwater, use a modeling demonstration, an ecological demonstration, or a combination of both, consistent with section 20120e(9) and (10), to determine whether the hazardous substance has reached surface water.

(c) Develop and propose to the department an analytical method for approval by the department.

(d) In lieu of determining the nature and extent of the hazardous substance release, eliminate the potential for exposure in areas where the hazardous substance is expected to be located through removal, containment, exposure barriers, or land use or resource use restrictions.

(7) As used in this section, "available analytical method" means a method that is approved and published by a governmental agency, is conducted routinely by commercial laboratories in the United States, and identifies and quantitatively measures the specific hazardous substance or class of substances.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 234, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20114a Undertaking response activities without prior approval of department; exception; completion; submission of no further action report.

Sec. 20114a. (1) Subject to section 20114 and other applicable law, a person may undertake response activities without prior approval by the department unless 1 or more response activities are being conducted pursuant to an administrative order or agreement or judicial decree that requires prior department approval. Except as otherwise provided in this part, conducting response activities under this section does not relieve any person who is liable under this part from the obligation to conduct further response activities as may be required by the department under this part or other applicable law.

(2) Upon completion of remedial actions that satisfy the cleanup criteria established under this part, a person undertaking remedial actions may submit to the department a no further action report.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 1996, Act 115, Imd. Eff. Mar. 6, 1996;—Am. 2010, Act 228, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20114b Response activity plan; submission; form; availability; response by department; failure of department to respond within certain time frames; extension; appeal of department's decision.

Sec. 20114b. (1) Subject to section 20114(1)(h), a person undertaking response activity under this part may submit to the department a response activity plan that includes a request for department approval of 1 or more aspects of response activity.

(2) A person who submits a response activity plan under this section and who is not subject to an administrative order or agreement or judicial decree that requires prior department approval of response

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activity shall submit a response activity plan review request form with the response activity plan. The department shall specify the required content of the response activity request form and make the form available on the department's website.

(3) Upon receipt of a response activity plan submitted for approval under this subsection, the department shall approve, approve with conditions, or deny the response activity plan, or shall notify the submitter that the plan does not contain sufficient information for the department to make a decision. The department shall provide its determination within 150 days after the plan was received by the department unless the plan requires public participation under section 20120d(2). If the plan requires public participation under section 20120d(2), the department shall respond within 180 days. If the department's response is that the plan does not include sufficient information, the department shall identify the information that is required for the department to make a decision. If a plan is approved with conditions, the department's approval shall state with specificity the conditions of the approval. If the plan is denied, the department's denial shall, to the extent practical, state with specificity all of the reasons for denial.

(4) If the department fails to provide a written response within the time frames required by subsection (3), the response activity plan is considered approved. If the department denies a response activity plan under subsection (3), a person may subsequently revise and resubmit the response activity plan for approval.

(5) Any time frame required by this section may be extended by mutual agreement of the department and a person submitting a response activity plan. An agreement extending a time frame shall be in writing.

(6) A person requesting approval of a response activity plan may appeal the department's decision in accordance with section 20114e, if applicable.

History: Add. 2010, Act 228, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20114c Remedial actions satisfying or not satisfying cleanup criteria for unrestricted residential use; preparation and implementation of postclosure plan; contents; notice of land use or resource use restrictions to department and zoning authority; liability; obligation to undertake response activities.

Sec. 20114c. (1) If remedial actions at a facility satisfy cleanup criteria for unrestricted residential use, land use or resource use restrictions or monitoring is not required.

(2) Upon completion of remedial actions at a facility for a category of cleanup that does not satisfy cleanup criteria for unrestricted residential use, the person conducting the remedial actions shall prepare and implement a postclosure plan for that facility. A postclosure plan shall include both of the following:

(a) Land use or resource use restrictions as provided in section 20121.

(b) Permanent markers to describe restricted areas of the facility and the nature of any restrictions. A permanent marker is not required under this subdivision if the only applicable land use or resource use restrictions relate to 1 or more of the following:

(*i*) A facility at which remedial action satisfies the cleanup criteria for the nonresidential category under section 20120a(1)(b).

(*ii*) Use of groundwater.

(*iii*) Protection of the integrity of exposure controls that prevent contact with soil, and those controls are composed solely of asphalt, concrete, or landscaping materials. This subparagraph does not apply if the hazardous substances that are addressed by the barrier exceed a cleanup criterion based on acute toxic effects, reactivity, corrosivity, ignitability, explosivity, or flammability.

(*iv*) Construction requirements or limitations for structures that may be built in the future.

(3) A person who implements a postclosure plan shall provide notice of the land use or resource use restrictions to the department and to the zoning authority for the local unit of government in which the facility is located within 30 days after recording the land use or resource use restrictions with the register of deeds.

(4) Implementation of remedial actions does not relieve a person who is liable under section 20126 of that person's responsibility to report and provide for response activity to address a subsequent release or threat of release.

(5) Implementation by any person of remedial actions without department approval does not relieve that person of an obligation to undertake response activities or limit the ability of the department to take action to require response activities necessary to comply with this part by a person who is liable under section 20126.

History: Add. 2010, Act 228, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 542, Imd.

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Popular name: Act 451

Popular name: Environmental Remediation

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324.20114d No further action report.

Sec. 20114d. (1) Upon completion of remedial actions that satisfy the requirements of this part, a person may submit a no further action report to the department. A person may submit a no further action report under this subsection for remedial actions addressing contamination for which the person is or is not liable. Remedial actions included in a no further action report may address all or a portion of contamination at a facility as follows:

(a) The remedial actions may address 1 or more releases at a facility.

(b) The remedial actions may address 1 or more hazardous substances at a facility.

(c) The remedial actions may address contamination in 1 or more environmental media at a facility.

(d) The remedial actions may address contamination within the entire facility or only a portion of a facility.

(e) The remedial actions may address contamination at a facility through any combination of subdivisions (a) through (d).

(2) A no further action report submitted under subsection (1) shall document the basis for concluding that the remedial actions have been completed. A no further action report may include a request that, upon approval, the release or conditions addressed by the no further action report be designated as a residential closure. A no further action report shall be submitted with a form developed by the department. The department shall make this form available on its website.

(3) A no further action report submitted under subsection (1) shall be submitted with the following, as applicable:

(a) If the remedial action at the facility satisfies the cleanup criteria for unrestricted residential use for the hazardous substances and portion of the facility addressed in the no further action report, neither a postclosure plan or a proposed postclosure agreement is required to be submitted.

(b) If the remedial action requires only land use or resource use restrictions and financial assurance is not required or the financial assurance is de minimis, a postclosure plan is required but a proposed postclosure agreement is not required to be submitted.

(c) For circumstances other than those described in subdivision (a) or (b), a postclosure plan and a proposed postclosure agreement are required to be submitted.

(4) A proposed postclosure agreement that is submitted as part of a no further action report shall include all of the following:

(a) Provisions for monitoring, operation and maintenance, and oversight necessary to assure the effectiveness and integrity of the remedial action.

(b) Financial assurance to pay for monitoring, operation and maintenance, oversight, and other costs determined by the department to be necessary to assure the effectiveness and integrity of the remedial action.

(c) A provision requiring notice to the department of the owner's intent to convey any interest in the facility 14 days prior to consummating the conveyance. A conveyance of title, an easement, or other interest in the property shall not be consummated by the property owner without adequate and complete provision for compliance with the terms and conditions of the postclosure plan and the postclosure agreement.

(d) A provision granting the department the right to enter the property at reasonable times for the purpose of determining and monitoring compliance with the postclosure plan and postclosure agreement, including the right to take samples, inspect the operation of the remedial action measures, and inspect records.

(5) A postclosure agreement may waive the requirement for permanent markers.

(6) The person submitting a no further action report shall include a signed affidavit attesting to the fact that the information upon which the no further action report is based is complete and true to the best of that person's knowledge. The no further action report shall also include a signed affidavit from an environmental consultant who meets the professional qualifications described in section 20114e(2) and who prepared the no further action report, attesting to the fact that the remedial actions detailed in the no further action report comply with all applicable requirements and that the information upon which the no further action report is based is complete and true to the best of that person's knowledge. In addition, the environmental consultant shall attach a certificate of insurance demonstrating that the environmental consultant has obtained at least all of the following from a carrier that is authorized to conduct business in this state:

(a) Statutory worker compensation insurance as required in this state.

(b) Professional liability errors and omissions insurance. This policy may not exclude bodily injury,

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property damage, or claims arising out of pollution for environmental work and shall be issued with a limit of not less than $1,000,000.00 per claim.

(c) Contractor pollution liability insurance with limits of not less than $1,000,000.00 per claim, if not included under the professional liability errors and omissions insurance required under subdivision (b). The insurance requirement under this subdivision is not required for environmental consultants who do not perform contracting functions.

(d) Commercial general liability insurance with limits of not less than $1,000,000.00 per claim and $2,000,000.00 aggregate.

(e) Automobile liability insurance with limits of not less than $1,000,000.00 per claim.

(7) A person submitting a no further action report shall maintain all documents and data prepared, acquired, or relied upon in connection with the no further action report for not less than 10 years after the later of the date on which the department approves the no further action report under this section, or the date on which no further monitoring, operation, or maintenance is required to be undertaken as part of the remedial action covered by the report. All documents and data required to be maintained under this section shall be made available to the department upon request.

(8) Upon receipt of a no further action report submitted under this subsection, the department shall approve or deny the no further action report or shall notify the submitter that the report does not contain sufficient information for the department to make a decision. If the no further action report requires a postclosure agreement, the department may negotiate alternative terms than those included within the proposed postclosure agreement. The department shall provide its determination within 150 days after the report was received by the department under this subsection unless the report requires public participation under section 20120d(2). If the report requires public participation under section 20120d(2), the department shall respond within 180 days. If the department's response is that the report does not include sufficient information, the department shall identify the information that is required for the department to make a decision. If the report is denied, the department's denial shall, to the extent practical, state with specificity all of the reasons for denial. If the no further action report, including any required postclosure plan and postclosure agreement, is approved, the department shall provide the person submitting the no further action report with a no further action letter. The department shall review and provide a written response within the time frames required by this subsection for at least 90% of the no further action reports submitted to the department under this section in each calendar year.

(9) If the department fails to provide a written response within the time frames required by subsection (8), the no further action report is considered approved.

(10) A person requesting approval of a no further action report under subsection (8) may appeal the department's decision in accordance with section 20114e.

(11) Any time frame required by this section may be extended by mutual agreement of the department and a person submitting a no further action report. An agreement extending a time frame shall be in writing.

(12) Following approval of a no further action report under this section, the owner or operator of the facility addressed by the no further action report may submit to the department an amended no further action report. The amended no further action report shall include the proposed changes to the original no further action report and an accompanying rationale for the proposed change. The process for review and approval of an amended no further action report is the same as the process for no further action reports.

History: Add. 2010, Act 228, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20114e Response activity review panel.

Sec. 20114e. (1) The director shall establish a response activity review panel to advise him or her on technical or scientific disputes, including disputes regarding assessment of risk, response activity plans, no further action reports, certificates of completion, and documentations of due care compliance under this part, and initial assessment reports, final assessment reports, closure reports, and documentations of due care compliance under part 213.

(2) The panel shall consist of 15 individuals, appointed by the director. Each member of the panel shall meet all of the following minimum requirements:

(a) Meet 1 or more of the following:

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(*i*) Hold a current professional engineer's or professional geologist's license or registration from a state, tribe, or United States territory, or the Commonwealth of Puerto Rico, and have the equivalent of 6 years of full-time relevant experience.

(*ii*) Have a baccalaureate degree from an accredited institution of higher education in a discipline of engineering or science and the equivalent of 10 years of full-time relevant experience.

(*iii*) Have a master's degree from an accredited institution of higher education in a discipline of engineering or science and the equivalent of 8 years of full-time relevant experience.

(b) Remain current in his or her field through participation in continuing education or other activities.

(3) An individual is not eligible to be a member of the panel if any 1 of the following is true:

(a) The individual is a current employee of any office, department, or agency of this state.

(b) The individual is a party to 1 or more contracts with the department and the compensation paid under those contracts represented more than 5% of the individual's annual gross revenue in any of the preceding 3 years.

(c) The individual is employed by an entity that is a party to 1 or more contracts with the department and the compensation paid to the individual's employer under these contracts represented more than 5% of the employer's annual gross revenue in any of the preceding 3 years.

(d) The individual was employed by the department within the preceding 3 years.

(4) An individual appointed to the panel shall serve for a term of 3 years and may be reappointed for 1 additional 3-year term. After serving 2 consecutive terms, the individual shall not be a member of the panel for a period of at least 2 years before being eligible to be appointed to the panel again. The terms for members first appointed shall be staggered so that not more than 5 vacancies are scheduled to occur in a single year. Individuals appointed to the panel shall serve without compensation. However, members of the panel may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the panel.

(5) A vacancy on the panel shall be filled in the same manner as the original appointment.

(6) The business that the panel may perform shall be conducted at a public meeting of the panel held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(7) A person who submitted a response activity plan; a no further action report; a request for certificate of completion or documentation of due care compliance under this part; or an initial assessment report, final assessment report, closure report, or documentation of due care compliance under part 213 may appeal a decision made by the department regarding a technical or scientific dispute, including a dispute regarding assessment of risk, concerning the response activity plan, no further action report, request for certificate of completion, initial assessment report, final assessment report, closure report, or documentation of due care compliance by submitting a petition to the director. However, an issue that was addressed as part of the final decision of the director under section 21332 or that is the subject of a contested case hearing under section 21332 is not eligible for review by the panel. The petition shall include the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis, opinion, and supporting documentation for the petitioner's position. The petitioner shall also submit a fee of $3,500.00. If the director believes that the dispute may be able to be resolved without convening the panel, the director may contact the petitioner regarding the issues in dispute and may negotiate a resolution of the dispute. This negotiation period shall not exceed 45 days. If the dispute is resolved without convening the panel, any fee that is submitted with the petition shall be returned.

(8) If a dispute is not resolved pursuant to subsection (7), the director shall schedule a meeting of 5 members of the panel, selected on the basis of their relevant expertise, within 45 days after receiving the original petition. If the dispute involves an underground storage tank system, at least 3 of the members selected shall have relevant experience in the American society for testing and materials risk-based corrective action processes described in part 213. A member selected for the dispute resolution process shall agree not to accept employment by the person bringing the dispute before the panel, or to undertake any employment concerning the facility in question for a period of 1 year after the decision has been rendered on the matter if that employment would represent more than 5% of the member's gross revenue in any of the preceding 3 years. The director shall provide a copy of all supporting documentation to members of the panel who will hear the dispute. An alternative member may be selected by the director to replace a member who is unable to participate in the dispute resolution process. Any action by the members selected to hear the dispute shall require a majority of the votes cast. The members selected for the dispute resolution process shall elect a chairperson of the dispute resolution process. At a meeting scheduled to hear the dispute, representatives of the petitioner and the department shall each be afforded an opportunity to present their positions to the panel. The fee that is received by the director along with the petition shall be forwarded to the state treasurer for deposit into the fund.

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(9) Within 45 days after hearing the dispute, the members of the panel who were selected for and participated in the dispute resolution process shall make a recommendation regarding the petition and provide written notice of the recommendation to the director of the department and the petitioner. The written recommendation shall include the specific scientific or technical rationale for the recommendation. The panel's recommendation regarding the petition may be to adopt, modify, or reverse, in whole or in part, the department's decision that is the subject of the petition. If the panel does not make its recommendation within this 45-day time period, the decision of the department is the final decision of the director.

(10) Within 60 days after receiving written notice of the panel's recommendation, the director shall issue a final decision, in writing, regarding the petition. However, this time period may be extended by written agreement between the director and the petitioner. If the director agrees with the recommendation of the panel, the department shall incorporate the recommendation into its response to the response activity plan, no further action report, request for certificate of completion, initial assessment report, final assessment report, closure report, or documentation of due care compliance. If the director rejects the recommendation of the panel, the director shall issue a written decision to the petitioner with a specific rationale for rejecting the recommendation of the panel. If the director fails to issue a final decision within the time period provided for in this subsection, the recommendation of the panel shall be considered the final decision of the director. The final decision of the director under this subsection is subject to review pursuant to section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

(11) Upon request of the director, the panel shall make a recommendation to the department on whether a member should be removed from the panel. Prior to making this recommendation, the panel may convene a peer review panel to evaluate the conduct of the member with regard to compliance with this part.

(12) A member of the panel shall not participate in the dispute resolution process for any appeal in which that member has a conflict of interest. The director shall select a member of the panel to replace a member who has a conflict of interest under this subsection. For purposes of this subsection, a member has a conflict of interest if a petitioner has hired that member or the member's employer on any environmental matter within the preceding 3 years.

(13) As used in this section, "relevant experience" means active participation in the preparation, design, implementation, and assessment of remedial investigations, feasibility studies, interim response activities, and remedial actions under this part or experience in the American society for testing and materials risk-based corrective action processes described in part 213. This experience must demonstrate the exercise of sound professional judgment and knowledge of the requirements of this part or part 213, or both.

History: Add. 2010, Act 227, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 109, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 178, Eff. Sept. 16, 2014.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.20114f Certificate of completion.

Sec. 20114f. (1) Upon completion of a response activity a person may request a certificate of completion from the department.

(2) To obtain a certificate of completion from the department under this section, a person shall submit each of the following to the department:

(a) A certificate of completion request form. The department shall specify the required content of the request form and make the form available on the department's website.

(b) Documentation of the completed response activity.

(3) Upon receipt of a request for a certificate of completion submitted under this subsection, the department shall issue a certificate or deny the request, or shall notify the submitter that there is not sufficient information for the department to make a decision. If the department's response is that the request does not include sufficient information, the department shall identify the information that is required for the department to make a decision. If the request is denied, the department's denial shall, to the extent practical, state with specificity all of the reasons for denial. The department shall make a decision under this subsection and shall provide the person submitting the request with a certificate of completion, as appropriate, within 1 of the following time frames, as applicable:

(a) 150 days after the request was received by the department if the response activity was undertaken without prior approval of the department and the department determines that the response activity complies with the applicable requirements of this part.

(b) 90 days after the request was received by the department if the response activity was undertaken

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pursuant to a response activity plan that was approved under section 20114b and the department determines that the response activity was completed in accordance with the approved plan.

(4) If the department fails to provide a written response within the time frame required by subsection (3), the response activity is considered approved.

(5) Any time frame required by this section may be extended by mutual agreement of the department and a person submitting a request for a certificate of completion or a person who has received a certificate of completion. An agreement extending a time frame shall be in writing.

(6) A person requesting a certificate of completion may appeal the department's decision in accordance with section 20114e, if applicable.

History: Add. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20114g Documentation of due care compliance.

Sec. 20114g. (1) A person may submit to the department documentation of due care compliance regarding a facility. The documentation of due care compliance shall be submitted on a form provided by the department and shall contain documentation of compliance with section 20107a, and other information required by the department.

(2) Within 45 business days after receipt of the documentation of due care compliance under subsection (1) containing sufficient information for the department to make a decision, the department shall approve, approve with conditions, or deny the documentation of due care compliance. If the department does not approve the documentation of due care compliance, the department shall provide the person that submitted the documentation the reasons why the documentation of due care compliance was not approved.

(3) A person that disagrees with a decision of the department under this section may submit a petition for review of scientific or technical disputes to the response activity review panel pursuant to section 20114e.

History: Add. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20115 Notice to department of agriculture and rural development; information; "substance regulated by the department of agriculture and rural development" defined; response activities to be consistent with MCL 324.8714(2).

Sec. 20115. (1) The department, upon confirmation of a release or threat of release of a substance that is regulated by the department of agriculture and rural development, shall notify the department of agriculture and rural development. The department of agriculture and rural development shall undertake or ensure the initiation of the necessary response activity to immediately stop or prevent further releases at the site. The department of agriculture and rural development shall consult with the department in the development of response activities if a release or threat of a release of a substance regulated by the department of agriculture and rural development occurs. The department of agriculture and rural development shall provide to the department information necessary to identify substances regulated by the department of agriculture and rural development. This information shall include but is not limited to the list of state registered pesticides.

(2) As used in this section, "substance regulated by the department of agriculture and rural development" means any of the following:

(a) A pesticide as defined in section 8305.

(b) A fertilizer as defined in section 8501.

(c) A soil conditioner as defined in section 8501a.

(d) A liming material as defined in section 1 of 1955 PA 162, MCL 290.531.

(3) Response activities conducted under this section shall be consistent with the requirements of section 8714(2).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 1995, Act 117, Imd. Eff. June 29, 1995;—Am. 2014, Act 178, Eff. Sept. 16, 2014.

Popular name: Act 451

Popular name: Environmental Remediation

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Popular name: Environmental Response Act

Popular name: NREPA

324.20115a Release or threat of release from underground storage tank system; corrective actions.

Sec. 20115a. (1) Notwithstanding any other provision of this part, if a release or threat of release at a facility is solely the result of a release or threat of release from an underground storage tank system regulated under part 213, the response activities implemented at the facility shall be the corrective actions required under part 213, and the requirements of section 20114 shall not apply to that release.

(2) Notwithstanding any other provision of this part, if a release or threat of release at a facility is not solely the result of a release or threat of release from an underground storage tank system, the owner or operator of the underground storage tank system as defined in part 213 may choose to conduct corrective actions of the release from the underground storage tank system pursuant to part 213, and the requirements of section 20114 shall not apply to that release.

History: Add. 1996, Act 115, Imd. Eff. Mar. 6, 1996.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20115b Release from disposal area; corrective actions; exception.

Sec. 20115b. Notwithstanding any other provision of this part, if a release at a disposal area licensed under part 115 is solely a release from that disposal area and the release is discovered through the disposal area's hydrogeological monitoring plan, the response activities implemented at the disposal area shall be the corrective actions required under part 115. This section does not apply to releases from a disposal area after completion of the postclosure monitoring period of the disposal area.

History: Add. 1996, Act 358, Eff. Oct. 1, 1996.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20116 Transfer of interest in real property; notice; certification of completed response activity.

Sec. 20116. (1) A person who has knowledge or information or is on notice through a recorded instrument that a portion or the entirety of a parcel of that person's property is a facility shall not transfer an interest in that real property unless he or she provides written notice to the purchaser or other person to which the property is transferred disclosing the known general nature and extent of the hazardous substance release and any land or resource use restrictions that are known by the person to apply. A restrictive covenant or notice that contains the required information that is recorded in the deed records for the property satisfies this requirement.

(2) The owner of real property for which a notice required in subsection (1) has been recorded may, upon completion of a response activity under this part for the facility, record with the register of deeds for the appropriate county a certification that the response activity has been completed.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20117 Information required to be furnished; requirements; right to enter public or private property; purposes; duties of person entering public or private property; copies of sample analyses, photographs, or videotapes; completion of inspections and investigations; refusing entry or information; powers of attorney general; injunction; civil fine; availability of information to public; protection of information; administrative subpoena; witness fees and mileage; court order; contempt; “information” defined.

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Sec. 20117. (1) To determine the need for response activity or selecting or taking a response activity or otherwise enforcing this part or a rule promulgated under this part, the directors or their authorized representatives may upon reasonable notice require a person to furnish any information that the person may have relating to any of the following:

(a) The identification, nature, and quantity of materials that have been or are generated, treated, stored, handled, or disposed of at a facility or transported to a facility.

(b) The nature or extent of a release or threatened release at or from a facility.

(2) Upon reasonable notice, a person required to furnish information pursuant to subsection (1) shall either:

(a) Grant the directors or their authorized representatives access at all reasonable times to any place, property, or location to inspect and copy the related information.

(b) Copy and furnish to the directors or their authorized representatives the related information.

(3) If there is a reasonable basis to believe that there may be a release or threat of release, the directors or their authorized representatives have the right to enter at all reasonable times any public or private property for any of the following purposes:

(a) Identifying a facility.

(b) Investigating the existence, origin, nature, or extent of a release or threatened release.

(c) Inspecting, testing, taking photographs or videotapes, or sampling of any of the following: soils, air, surface water, groundwater, suspected hazardous substances, or any containers or labels of suspected hazardous substances.

(d) Determining the need for or selecting any response activity.

(e) Taking or monitoring implementation of any response activity.

(4) A person that enters public or private property pursuant to subsection (3) shall present credentials; make a reasonable effort to contact the person in charge of the facility or that person's designee; describe the nature of the activities authorized under subsection (3) to be undertaken; and inform the person that is in charge of the facility that he or she is entitled to participate in the collection of split samples, and is entitled to a copy of the results of any analysis of samples and a copy of any photograph or videotape taken. The person in charge or his or her agent may accompany the directors or their authorized representatives during the activities authorized under subsection (3) that take place and may participate in the collection of any split samples on the property. The absence or unavailability of the person in charge or that person's agent shall not delay or limit the authority of the directors or their authorized representatives to enter the property or proceed with the activities authorized under subsection (3).

(5) If the directors or their authorized representatives obtain any samples, before leaving the property they shall give to the person in charge of the property from which the samples were obtained a receipt describing the sample. A copy of the results of any analysis of the samples shall upon request be furnished promptly to the person in charge. A copy of any photograph or videotape taken pursuant to subsection (3)(c) shall upon request be furnished promptly to the person in charge.

(6) All inspections and investigations undertaken by the directors or their authorized representatives under this section shall be completed with reasonable promptness.

(7) If refused entry or information under subsections (1) to (4), for the purposes of enforcing the information gathering and entry authority provided in this section, the attorney general, on behalf of the state, may do either of the following:

(a) Petition the court of appropriate jurisdiction for a warrant authorizing access to property or information pursuant to this section.

(b) Commence a civil action to compel compliance with a request for information or entry pursuant to this section, to authorize information gathering and entry provided for in this section, and to enjoin interference with the exercise of the authority provided in this section.

(8) In a civil action brought pursuant to subsection (7), if there is a reasonable basis to believe there may be a release or a threatened release, the court shall in the case of interference or noncompliance with information requests pursuant to subsection (1), or with entry or inspection requests pursuant to subsection (3), enjoin interference with and direct compliance with the requests unless the defendant establishes that, under the circumstances of the case, the request is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

(9) In a civil action brought pursuant to subsection (7), if there is a reasonable basis to believe there may be a release or a threatened release, the court may assess a civil fine not to exceed $25,000.00 for each day of noncompliance against a person that unreasonably fails to comply with subsection (1), (2), or (3).

(10) Information obtained by the directors or their authorized representatives as authorized under subsection (1) or (2) shall be available to the public to the extent provided by the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws. A

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person who provides information pursuant to subsection (1) or (2), or the person in charge of a facility at which photographs or videotapes are taken pursuant to subsection (3), may designate the information that the person believes to be entitled to protection as if the information was exempt from disclosure as being either trade secrets or information of a personal nature under section 13(1)(a) or (g) of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.243 of the Michigan Compiled Laws, and submit that specifically designated information separately from other information required to be provided under this section.

(11) Notwithstanding subsection (10), the following information obtained by the directors or their authorized representatives as required by this section shall be available to the public:

(a) The trade name, common name, or generic class or category of the hazardous substance.

(b) The physical properties of a hazardous substance, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees Celsius.

(c) The hazards to the public health, safety, or welfare, or the environment posed by a hazardous substance, including physical hazards, such as explosion, and potential acute and chronic health hazards.

(d) The potential routes of human exposure to the hazardous substance at the facility being investigated, entered, or inspected under this section.

(e) The location of disposal of any waste stream released or threatened to be released from the facility.

(f) Monitoring data or analysis of monitoring data pertaining to disposal activities related to the facility.

(g) Hydrogeologic data.

(h) Groundwater monitoring data.

(12) To collect information for the purpose of identifying persons who are liable under section 20126 or to otherwise enforce this part or a rule promulgated under this part, the attorney general may by administrative subpoena require the attendance and testimony of witnesses and production of papers, reports, documents, answers to questions, and other information the attorney general considers necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of this state. If a person fails or refuses to obey the administrative subpoena, the circuit court for the county of Ingham or for the county in which that person resides has jurisdiction to order that person to comply with the subpoena. A failure to obey the order of the court is punishable by the court as contempt.

(13) As used in this section, “information” includes, but is not limited to, documents, materials, records, photographs, and videotapes.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20118 Response activity; remedial action; purposes; selection or approval; conditions.

Sec. 20118. (1) The department may take response activity or approve of response activity proposed by a person that is consistent with this part and the rules promulgated under this part relating to the selection and implementation of response activity that the department concludes is necessary and appropriate to protect the public health, safety, or welfare, or the environment.

(2) Remedial action undertaken under subsection (1) may address all or a portion of contamination at a facility as follows:

(a) Remedial action may address 1 or more releases at a facility.

(b) Remedial action may address 1 or more hazardous substances at a facility.

(c) Remedial action may address contamination in 1 or more environmental media at a facility.

(d) Remedial action may address contamination within the entire facility or only a portion of a facility.

(e) Remedial action may address contamination at a facility through any combination of subdivisions (a) through (d).

(3) Remedial action undertaken under subsection (1) shall accomplish all of the following:

(a) Assure the protection of the public health, safety, and welfare, and the environment with respect to the environmental contamination addressed by the remedial action.

(b) Except as otherwise provided in subsections (4) and (5), attain a degree of cleanup and control of the environmental contamination addressed by the remedial action that complies with all applicable or relevant and appropriate requirements, rules, criteria, limitations, and standards of state and federal environmental law.

(c) Except as otherwise provided in subsections (4) and (5), be consistent with any cleanup criteria incorporated in rules promulgated under this part for the environmental contamination addressed by the

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remedial action.

(4) The department may select or approve of a remedial action meeting the criteria provided for in section 20120a that does not attain a degree of control or cleanup of hazardous substances that complies with R 299.3(5) or R 299.3(6) of the Michigan administrative code, or both, if the department makes a finding that the remedial action is protective of the public health, safety, and welfare, and the environment. Notwithstanding any other provision of this subsection, the department shall not approve of a remedial action that does not attain a degree of control or cleanup of hazardous substances that complies with R 299.3(5) or R 299.3(6) of the Michigan administrative code if the remedial action is being implemented by a person who is liable under section 20126 and the release was grossly negligent or intentional, unless attaining that degree of control is technically infeasible, or the adverse environmental impact of implementing a remedial action to satisfy the rule would exceed the environmental benefit of that remedial action.

(5) A remedial action may be selected or approved pursuant to subsection (4) with regard to R 299.3(5) or R 299.3(6), or both, of the Michigan administrative code, if the department determines, based on the administrative record, that 1 or more of the following conditions are satisfied:

(a) Compliance with R 299.3(5) or R 299.3(6), or both, of the Michigan administrative code is technically impractical.

(b) The remedial action selected or approved will, within a reasonable period of time, attain a standard of performance that is equivalent to that required under R 299.3(5) or R 299.3(6) of the Michigan administrative code.

(c) The adverse environmental impact of implementing a remedial action to satisfy R 299.3(5) or R 299.3(6), or both, of the Michigan administrative code would exceed the environmental benefit of the remedial action.

(d) The remedial action provides for the reduction of hazardous substance concentrations in the aquifer through a naturally occurring process that is documented to occur at the facility and both of the following conditions are met:

(*i*) It has been demonstrated that there will be no adverse impact on the environment as the result of migration of the hazardous substances during the remedial action, except for that part of the aquifer approved by the department in connection with the remedial action.

(*ii*) The remedial action includes enforceable land use restrictions or other institutional controls necessary to prevent unacceptable risk from exposure to the hazardous substances, as defined by the cleanup criteria approved as part of the remedial action.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20119 Action to abate danger or threat; administrative order; noncompliance; liability; petition for reimbursement; action in court of claims; evidence.

Sec. 20119. (1) In accordance with this section, if the department determines that there may be an imminent and substantial endangerment to the public health, safety, or welfare, or the environment, because of a release or threatened release, the department may require persons who are liable under section 20126 to take necessary action to abate the danger or threat.

(2) The department may issue an administrative order to a person identified by the department as a person who is liable under section 20126 requiring that person to perform response activity relating to a facility for which that person is liable or to take any other action required by this part. An order issued under this section shall state with reasonable specificity the basis for issuance of the order and specify a reasonable time for compliance.

(3) Within 30 days after issuance of an administrative order under this section, a person to which the order was issued shall indicate in writing whether the person intends to comply with the order.

(4) A person who, without sufficient cause, violates or fails to properly comply with an administrative order issued under this section is liable for either or both of the following:

(a) A civil fine of not more than $25,000.00 for each day in which the violation occurs or the failure to comply continues. A fine imposed under this subsection shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the administrative order.

(b) Exemplary damages in an amount at least equal to the amount of any costs of response activity incurred

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by the state as a result of a failure to comply with an administrative order but not more than 3 times the amount of these costs.

(5) A person, to which an administrative order was issued under this section and that complied with the terms of the order, who believes that the order was arbitrary and capricious or unlawful may petition the department, within 60 days after completion of the required action, for reimbursement from the fund for the reasonable costs of the action plus interest at the rate described in section 20126a(3) and other necessary costs incurred in seeking reimbursement under this subsection. If the department refuses to grant all or part of the petition, the petitioner may, within 30 days of receipt of the refusal, file an action against the department in the court of claims seeking this relief. A failure by the department either to grant or deny all or any part of a petition within 120 days of receipt constitutes a denial of that part of the petition, which denial is reviewable as final agency action in the court of claims. To obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that the petitioner is not liable under section 20126 or that the action ordered was arbitrary and capricious or unlawful, and in either instance that costs for which the petitioner seeks reimbursement are reasonable in light of the action required by and undertaken pursuant to the relevant order.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20120 Selection of remedial action; factors.

Sec. 20120. (1) All of the following shall be considered when a person is selecting a remedial action or the department is selecting or approving a remedial action:

(a) The effectiveness of alternatives in protecting the public health, safety, and welfare and the environment.

(b) The long-term uncertainties associated with the proposed remedial action.

(c) The persistence, toxicity, mobility, and propensity to bioaccumulate of the hazardous substances.

(d) The short- and long-term potential for adverse health effects from human exposure.

(e) Costs of remedial action, including long-term maintenance costs. However, the cost of a remedial action shall be a factor only in choosing among alternatives that adequately protect the public health, safety, and welfare and the environment, consistent with the requirements of section 20120a.

(f) Reliability of the alternatives.

(g) The potential for future response activity costs if an alternative fails.

(h) The potential threat to human health, safety, and welfare and the environment associated with excavation, transportation, and redisposal or containment.

(i) The ability to monitor remedial performance.

(j) For remedial actions that require the opportunity for public participation under section 20120d, the public's perspective about the extent to which the proposed remedial action effectively addresses requirements of this part.

(2) Evaluation of the factors in subsection (1) shall consider all factors in balance with one another as necessary to achieve the objectives of this part. No single factor in subsection (1) shall be considered the most important.

History: Add. 2010, Act 228, Imd. Eff. Dec. 14, 2010.

Compiler's note: Former MCL 324.20120, which pertained to schedule of remedial action plans, was repealed by Act 71 of 1995, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20120a Cleanup criteria.

Sec. 20120a. (1) The department may establish cleanup criteria and approve of remedial actions in the categories listed in this subsection. The cleanup category proposed shall be the option of the person proposing the remedial action, subject to department approval if required, considering the appropriateness of the categorical criteria to the facility. The categories are as follows:

(a) Residential.

(b) Nonresidential.

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(c) Limited residential.

(d) Limited nonresidential.

(2) As an alternative to the categorical criteria under subsection (1), the department may approve a response activity plan or a no further action report containing site-specific criteria that satisfy the requirements of section 20120b and other applicable requirements of this part. The department shall utilize only reasonable and relevant exposure pathways in determining the adequacy of a site-specific criterion. Additionally, the department may approve a remedial action plan for a designated area-wide zone encompassing more than 1 facility, and may consolidate remedial actions for more than 1 facility.

(3) The department shall develop cleanup criteria pursuant to subsection (1) based on generic human health risk assessment assumptions determined by the department to appropriately characterize patterns of human exposure associated with certain land uses. The department shall utilize only reasonable and relevant exposure pathways in determining these assumptions. The department may prescribe more than 1 generic set of exposure assumptions within each category described in subsection (1). If the department prescribes more than 1 generic set of exposure assumptions within a category, each set of exposure assumptions creates a subcategory within a category described in subsection (1). The department shall specify facility characteristics that determine the applicability of criteria derived for these categories or subcategories.

(4) If a hazardous substance poses a carcinogenic risk to humans, the cleanup criteria derived for cancer risk under this section shall be the 95% upper bound on the calculated risk of 1 additional cancer above the background cancer rate per 100,000 individuals using the generic set of exposure assumptions established under subsection (3) for the appropriate category or subcategory. If the hazardous substance poses a risk of an adverse health effect other than cancer, cleanup criteria shall be derived using appropriate human health risk assessment methods for that adverse health effect and the generic set of exposure assumptions established under subsection (3) for the appropriate category or subcategory. A hazard quotient of 1.0 shall be used to derive noncancer cleanup criteria. For the noncarcinogenic effects of a hazardous substance present in soils, the intake shall be assumed to be 100% of the protective level, unless compound and site-specific data are available to demonstrate that a different source contribution is appropriate. If a hazardous substance poses a risk of both cancer and 1 or more adverse health effects other than cancer, cleanup criteria shall be derived under this section for the most sensitive effect.

(5) If a cleanup criterion derived under subsection (4) for groundwater in an aquifer differs from either: (a) the state drinking water standards established pursuant to section 5 of the safe drinking water act, 1976 PA 399, MCL 325.1005, or (b) the national secondary drinking water regulations established pursuant to 42 USC 300g-1, or (c) if there is not national secondary drinking water regulation for a contaminant, the concentration determined by the department according to methods approved by the United States environmental protection agency below which taste, odor, appearance, or other aesthetic characteristics are not adversely affected, the cleanup criterion shall be the more stringent of (a), (b), or (c) unless the department determines that compliance with this subsection is not necessary because the use of the aquifer is reliably restricted or controlled under provisions of a postclosure plan or a postclosure agreement or by site-specific criteria approved by the department under section 20120b.

(6) The department shall not approve a remedial action plan or no further action report in categories set forth in subsection (1)(b) to (d), unless the person documents that the current zoning of the property is consistent with the categorical criteria being proposed, or that the governing zoning authority intends to change the zoning designation so that the proposed criteria are consistent with the new zoning designation, or the current property use is a legal nonconforming use. The department shall not grant final approval for a remedial action plan or no further action report that relies on a change in zoning designation until a final determination of that zoning change has been made by the local unit of government. The department may approve of a remedial action plan or no further action report that achieves categorical criteria that are based on greater exposure potential than the criteria applicable to current zoning. In addition, the remedial action plan or no further action report shall include documentation that the current property use is consistent with the current zoning or is a legal nonconforming use. Abandoned or inactive property shall be considered on the basis of zoning classifications as described above.

(7) Cleanup criteria from 1 or more categories in subsection (1) may be applied at a facility, if all relevant requirements are satisfied for application of a pertinent criterion.

(8) The need for soil remediation to protect an aquifer from hazardous substances in soil shall consider the vulnerability of the aquifer or aquifers potentially affected if the soil remains at the facility. Migration of hazardous substances in soil to an aquifer is a pertinent pathway if appropriate based on consideration of site specific factors.

(9) The department may establish cleanup criteria for a hazardous substance using a biologically based model developed or identified as appropriate by the United States environmental protection agency if the

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department determines all of the following:

(a) That application of the model results in a criterion that more accurately reflects the risk posed.

(b) That data of sufficient quantity and quality are available for a specified hazardous substance to allow the scientifically valid application of the model.

(c) The United States environmental protection agency has determined that application of the model is appropriate for the hazardous substance in question.

(10) If the target detection limit or the background concentration for a hazardous substance is greater than a cleanup criterion developed for a category pursuant to subsection (1), the criterion shall be the target detection limit or background concentration, whichever is larger, for that hazardous substance in that category.

(11) The department may also approve cleanup criteria if necessary to address conditions that prevent a hazardous substance from being reliably measured at levels that are consistently achievable in samples from the facility in order to allow for comparison with generic cleanup criteria. A person seeking approval of a criterion under this subsection shall document the basis for determining that the relevant published target detection limit cannot be achieved in samples from the facility.

(12) In determining the adequacy of a land-use based response activity to address sites contaminated by polychlorinated biphenyls, the department shall not require response activity in addition to that which is subject to and complies with applicable federal regulations and policies that implement the toxic substances control act, 15 USC 2601 to 2692.

(13) Remedial action to address the release of uncontaminated mineral oil satisfies cleanup criteria under this part for groundwater or for soil if all visible traces of mineral oil are removed from groundwater and soil.

(14) Approval by the department of remedial action based on the categorical standard in subsection (1)(a) or (b) shall be granted only if the pertinent criteria are satisfied in the affected media. The department shall approve the use of probabilistic or statistical methods or other scientific methods of evaluating environmental data when determining compliance with a pertinent cleanup criterion if the methods are determined by the department to be reliable, scientifically valid, and best represent actual site conditions and exposure potential.

(15) If a discharge of venting groundwater complies with this part, a permit for the discharge is not required.

(16) Remedial actions that rely on categorical cleanup criteria developed pursuant to subsection (1) shall also consider other factors necessary to protect the public health, safety, and welfare, and the environment as specified by the department, if the department determines based on data and existing information that such considerations are relevant to a specific facility. These factors include, but are not limited to, the protection of surface water quality and consideration of ecological risks if pertinent to the facility based on the requirements of this part.

(17) Not later than December 31, 2013, the department shall evaluate and revise the cleanup criteria derived under this section. The evaluation and any revisions shall incorporate knowledge gained through research and studies in the areas of fate and transport and risk assessment and shall take into account best practices from other states, reasonable and realistic conditions, and sound science. Following this revision, the department shall periodically evaluate whether new information is available regarding the cleanup criteria and shall make revisions as appropriate. The department shall prepare and submit to the legislature a report detailing any revisions made to cleanup criteria under this section.

(18) A person demonstrates compliance with indoor air inhalation criteria for a hazardous substance at a facility under this part if all of the following conditions are met:

(a) The facility is an establishment covered by the classifications provided by sector 31-33 – manufacturing, of the North American industry classification system, United States, 2012, published by the office of management and budget.

(b) The person complies with the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, and the rules promulgated under that act applicable to the exposure to the hazardous substance, including, but not limited to, the occupational health standards for air contaminants, R 325.51101 to R 325.51108 of the Michigan administrative code.

(c) The hazardous substance is included in the facility's hazard communication program under section 14a of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1014a, and the hazard communication rules, R 325.77001 to R 325.77004 of the Michigan administrative code, except that unless the hazardous substance is in use in the facility, the requirement to have a material safety data sheet in the workplace requires only a generic material safety data sheet for the hazardous substance and the labeling requirements do not apply.

(19) The department shall make available the algorithms used to calculate all residential and nonresidential generic cleanup criteria, and tables listing, by hazardous substance, all toxicity, exposure, and other algorithm

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factors or variables used in the department's calculations.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 228, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20120b Numeric or nonnumeric site-specific criteria.

Sec. 20120b. (1) The department shall approve numeric or nonnumeric site-specific criteria in a response activity under section 20120a if such criteria, in comparison to generic criteria, better reflect best available information concerning the toxicity or exposure risk posed by the hazardous substance or other factors.

(2) Site-specific criteria approved under subsection (1) may, as appropriate:

(a) Use the algorithms for calculating generic criteria established by rule or propose and use different algorithms.

(b) Alter any value, parameter, or assumption used to calculate generic criteria, with the exception of the risk targets specified in section 20120a(4).

(c) Take into consideration the depth below the ground surface of contamination, which may reduce the potential for exposure and serve as an exposure barrier.

(d) Be based on information related to the specific facility or information of general applicability, including peer-reviewed scientific literature.

(e) Use probabilistic methods of calculation.

(f) Use nonlinear-threshold-based calculations where scientifically justified.

(g) Take into account a land use or resource use restriction.

(3) If there is not a generic cleanup criterion for a hazardous substance in regard to a relevant exposure pathway, releases of the hazardous substance may be addressed through any of the following means, singly or in combination:

(a) Eliminate exposure to the hazardous substance through removal, containment, exposure barriers, or land use or resource use restrictions.

(b) If another hazardous substance is expected to have similar fate, mobility, bioaccumulation, and toxicity characteristics, apply the cleanup criteria for that hazardous substance as a surrogate. Before using a surrogate, the person shall notify the department, provide a written explanation why the surrogate is suitable, and request approval. If the department does not notify the person that it disapproves the use of the chosen surrogate within 90 days after receipt of the notice, the surrogate is considered approved. A hazardous substance may be used as a surrogate for a single hazardous substance or for a class or category of hazardous substances.

(c) For venting groundwater, use a modeling demonstration, an ecological demonstration, or a combination of both, consistent with section 20120e(9) and (10), to demonstrate that the hazardous substance is not likely to migrate to a surface water body or has not or will not impair the existing or designated uses for a surface water body.

(d) If toxicity information is available for the hazardous substance, develop site-specific cleanup criteria for the hazardous substance pursuant to subsections (1) and (2), or develop simplified site-specific screening criteria based upon toxicity and concentrations found on site, and request department approval. If the department does not notify the person that it disapproves the site-specific criteria or screening criteria within 90 days after receipt of the request, the criteria are considered approved.

(e) Any other method approved by the department.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 228, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: Environmental Remediation

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324.20120c Relocation of contaminated soil.

Sec. 20120c. (1) An owner or operator may relocate contaminated soil off-site or allow contaminated soil to be relocated off-site if all of the following requirements are met:

(a) The person determines that the soil can be lawfully relocated without posing a threat to the public

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health, safety, or welfare or the environment. In making the determination, the owner or operator shall consider whether the soil is subject to regulation under part 111. For the purposes of this subdivision, soil poses a threat to the public health, safety, or welfare or the environment if concentrations of hazardous substances in the soil exceed the cleanup criterion determined pursuant to section 20120a(1) or (2) that apply to the facility to which the soil will be relocated. Any land use or resource use restrictions that would be required for the application of a criterion pursuant to section 20120a(1) or (2) shall be in place at the facility before the soil is relocated. Contaminated soil shall not be relocated to a location that is not a facility.

(b) Prior department approval is obtained if the contaminated soil is being relocated off-site from or to either of the following:

(*i*) A facility where a remedial action plan that includes soil as an affected media has been approved by the department based on a categorical cleanup criterion in section 20120a(1)(b), (c), or (d) or site-specific criteria under section 20120a(2).

(*ii*) A facility where a no further action report that includes soil as an affected medium has been approved by the department.

(c) If contaminated soil is being relocated off-site in a manner not addressed by subdivision (b), the owner or operator of the facility from which soil is being relocated provides notice to the department within 14 days after the soil is relocated. The notice shall include all of the following:

(*i*) The facility from which soil was relocated.

(*ii*) The facility to which the soil was relocated.

(*iii*) the volume of soil relocated.

(*iv*) A summary of information or data on which the owner or operator based the determination required in subdivision (a) that the soil did not present a threat to the public health, safety, or welfare or the environment.

(*v*) If land use or resource use restrictions in a postclosure plan or a postclosure agreement would apply to the soil when it is relocated, documentation that those restrictions are in place.

(2) An owner or operator may relocate contaminated soil, or allow contaminated soil to be relocated, on-site if all of the following requirements are met:

(a) If either a remedial action plan that includes soil as an affected medium or a no further action report that includes soil as an affected medium has been approved for a facility, the person assures that the same degree of control required for application of the criteria of section 20120a(1) or (2) under the remedial action plan or no further action report is provided for the contaminated soil. This subdivision does not apply to soils that are temporarily relocated for the purpose of implementing response activity or utility construction if the response activity or utility construction is completed in a timely fashion and the short-term hazards are appropriately controlled.

(b) If 500 cubic yards or more of contaminated soil are being relocated on-site at a facility where either a remedial action plan that includes soil as an affected medium or a no further action report that includes soil as an affected medium has been approved by the department, the owner or operator of the facility at which soil is being relocated provides notice to the department within 14 days after the soil is relocated. The notice shall include all of the following:

(*i*) The facility from which soil was relocated.

(*ii*) The facility to which the soil was taken.

(*iii*) The volume of soil relocated.

(*iv*) A summary of information or data assuring that the same degree of control required for application of the criteria of section 20120a(1) or (2) is provided for the contaminated soil under subdivision (a).

(*v*) If land use or resource use restrictions in a postclosure plan or a postclosure agreement would apply to the soil when it is relocated, documentation that those restrictions are in place.

(c) If subdivision (b) does not apply and an owner or operator relocates contaminated soil on-site without department approval or notice to the department, the owner of the facility within which contaminated soil is relocated includes the following information regarding the relocation as part of disclosing the general nature and extent of the release under section 20116 to a purchaser or other person to which the facility is transferred:

(*i*) The facility from which soil was relocated.

(*ii*) The facility to which the soil was taken.

(*iii*) The volume of soil relocated.

(*iv*) A summary of the basis for the owner's or operator's determination that the relocation did not cause any exacerbation under section 20107a(1).

(d) Section 20107a(1) and (3) applies to the relocation of soil under this subsection even if an owner or operator is not otherwise subject to section 20107a.

(3) The determination required by subsections (1)(a) and (2)(a) shall be based on knowledge of the person

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undertaking or approving of the removal or relocation of soil, or on characterization of the soil for the purpose of compliance with this section.

(4) This section does not apply to the following:

(a) Soil that is designated as an inert material pursuant to section 11507(3).

(b) Uncontaminated soil that is mixed with a beneficial use by-product under part 115.

(c) Soil that is relocated for treatment or disposal in conformance with applicable laws and regulations.

(d) The relocation of uncontaminated soil.

(5) As used in this section:

(a) "Contaminated soil" means soil that meets all of the following criteria:

(*i*) The soil is contaminated with 1 or more hazardous substances at levels that exceed the background concentration for that hazardous substance or those hazardous substances.

(*ii*) The soil is contaminated with 1 or more hazardous substances at levels that exceed any applicable cleanup criteria under section 20120a(1) or any applicable site-specific criteria under section 20120b.

(b) "Off-site" means property that is not on-site.

(c) "On-site" means within any contiguous or adjacent parcels owned by or under the control of an owner or operator.

(d) "Uncontaminated soil" means soil that is either of the following:

(*i*) Not contaminated with any hazardous substances due to human activity.

(*ii*) Contaminated with 1 or more hazardous substances as a result of human activity but the levels of those hazardous substances at the facility do not exceed any categorical cleanup criteria under section 20120a(1) or site-specific criteria under section 20120b.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 228, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

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Popular name: NREPA

324.20120d Public meeting; notice; publication; summary document; administrative record; comments or information not included in record.

Sec. 20120d. (1) At a facility where state funds will be spent to develop or implement a remedial action plan or where the department determines there is a significant public interest, within 30 days after the completion of a remedial investigation for the facility, the department shall provide the county and the township, city, or village in which the facility is located a notice of the completion of the remedial investigation, a summary of the remedial investigation, and notice of an opportunity for residents of the local unit of government to meet with the department regarding the remedial investigation and any proposed feasibility study for the facility. Upon a request for a public meeting by the governing body of the local unit of government or by 25 citizens of the local unit of government, the department shall, within 30 days of the request, meet with persons in the local unit of government. The person or persons requesting the public meeting shall publicize and provide accommodations for the meeting. The meeting shall be held in the local unit of government in which the facility is located. The department shall provide copies of the notices and summary required in this subsection to the governing body of the local unit of government, to the known persons who are liable under section 20126, and to the main public library of the local unit of government in which the facility is located. The department shall send representatives to the meeting who are familiar with the facility and who are involved with determining the appropriate remedial actions to be taken at the facility. Persons who are liable under section 20126 for the facility may send representatives to the meeting.

(2) Before approval of a proposed remedial action plan, response activity plan, or no further action report based on categorical criteria provided for in section 20120a(1)(c) or (d) or site-specific criteria provided for in section 20120a(2) and where the department determines that there is significant public interest, the department shall do all of the following:

(a) Publish a notice and brief summary of the proposed remedial action plan, response activity plan, or no further action report.

(b) Provide for public review and comment pertinent to documents relating to the proposed remedial action plan, response activity plan, or no further action report.

(c) Provide an opportunity for a public meeting at or near the facility when any of the following occur:

(*i*) The department determines that there is a significant public interest or that for any other reason a public meeting is appropriate.

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(*ii*) A city, township, or village in which the facility is located, by a majority vote of its governing body, requests a public meeting.

(*iii*) A local health department with jurisdiction in the area in which the facility is located requests a public meeting.

(d) Provide a document that summarizes the major issues raised by the public and how they are to be addressed by the final approved remedial action plan, response activity plan, or no further action report.

(3) For purposes of this section, publication shall include, at a minimum, publication in a local newspaper or newspaper of general circulation in this state. In addition, the administrative record shall be made available by the department for inspection by members of the public at or near the facility and in Lansing.

(4) The department shall prepare a summary document that explains the reasons for the selection or approval of a remedial action plan, response activity plan, or no further action report. In addition, the department shall compile an administrative record of the decision process that results in the selection of a remedial action plan. The administrative record shall contain all of the following:

(a) Remedial investigation data regarding the facility.

(b) If applicable, a feasibility study and remedial actions planned or completed.

(c) If applicable, a summary document that explains the reasons why a remedial investigation or feasibility study was not conducted.

(d) Applicable comments and information received from the public, if any.

(e) If applicable, a document that summarizes the significant concerns raised by the members of the public and how they are to be addressed.

(f) Other information appropriate to the facility.

(5) If comments or information are submitted for inclusion in the administrative record that are not included in the administrative record, a brief explanation of why the information was not considered relevant shall be sent to the party by the department and included in the record.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 1996, Act 380, Imd. Eff. July 24, 1996;—Am. 1996, Act 383, Imd. Eff. July 24, 1996;—Am. 2010, Act 228, Imd. Eff. Dec. 14, 2010;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

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324.20120e Response activity providing for venting groundwater; definitions.

Sec. 20120e. (1) Subject to other requirements of this section, a person may demonstrate compliance with requirements under this part for a response activity providing for venting groundwater by meeting any of the following, singly or in combination:

(a) Generic GSI criteria, which are the water quality standards for surface waters developed by the department pursuant to part 31. The use of surface water quality standards or variances shall be allowable in any of the cleanup categories provided for in section 20120a(1).

(b) A variance from the surface water quality standards as approved by the department under part 31. A variance shall be used only if the variance is requested by a person performing response activities with respect to venting groundwater.

(c) Mixing zone-based GSI criteria established under this part, which are consistent with part 31. The use of mixing zone-based GSI criteria shall be allowable in any of the categories provided for in section 20120a(1) and (2) and shall be allowable for criteria based on chronic-based or acute-based surface water quality criteria.

(d) Site-specific criteria established under section 20120b or this subdivision or a combination of both. The use of mixing zones established under this part may be applied to, or included as, site-specific criteria. Biological criteria may be used as site-specific criteria. If biological criteria are used, then sentinel wells shall be used for a period as needed to determine if the biological criteria may be exceeded due to future increased mass loading to the surface water from the venting plume. Numerical evaluations of analyses of the samples from the sentinel wells shall be performed in connection with this determination.

(e) An ecological demonstration under subsection (9).

(f) A modeling demonstration under subsection (10).

(2) Whole effluent toxicity testing shall not be required or be a criterion or be the basis for any criteria under subsection (1) for venting groundwater except for samples taken at the GSI.

(3) The pathway addressed by GSI criteria under subsection (1) shall be considered a relevant pathway when a remedial investigation or application of best professional judgment leads to the conclusion that a

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hazardous substance in groundwater is reasonably expected to vent to surface water in concentrations that exceed the generic GSI criteria. The factors to be considered in determining whether the pathway is relevant include all of the following:

(a) Whether there is a hydraulic connection between groundwater and the surface water in question.

(b) The proximity of surface water to source areas and areas of the groundwater contaminant plume that currently, or may in the future be expected to, exceed the generic GSI criteria.

(c) Subject to subsection (23)(g), whether the receiving surface water is a surface water of the state as that term is defined in part 31 and rules promulgated under that part.

(d) The direction of groundwater movement.

(e) The presence of artificial structures or natural features that would alter hydraulic pathways. This includes, but is not limited to, highly permeable zones, utility corridors, and seawalls.

(f) The mass of hazardous substances present at the facility that may affect groundwater.

(g) Documented facility-specific evidence of natural attenuation, if any.

(h) Whether or not a sewer that has an outfall to surface water has openings in the portion of the sewer where the sewer and the groundwater contaminant plume intersect that allows the groundwater contaminant plume to migrate into the sewer. If it can be demonstrated that the sewer is sufficiently tight to prevent inflow to the sewer where the groundwater contaminant plume intersects the sewer or if the sewer is otherwise impervious, based on accepted industry standards, to prevent inflow from groundwater into the sewer at that location, then the GSI pathway with respect to the sewer is not relevant and shall not apply.

(4) For purposes of determining the relevance of a pathway under subsection (3), both of the following apply:

(a) GSI monitoring wells are not required in order to make a determination if other information is sufficient to make a judgment that the pathway is not relevant.

(b) Fate and transport modeling may be used, if appropriate, to support a professional judgment.

(5) A person may proceed under section 20114a to undertake the following response activities involving venting groundwater:

(a) Evaluation activities associated with a response activity providing for venting groundwater using alternative monitoring points, an ecological demonstration, a modeling demonstration, or any combination of these. If a person who is liable under section 20126 decides not to take additional response activities to address the GSI pathway based on alternative monitoring points, an ecological demonstration, a modeling demonstration, or a determination under subsection (14), or any combination of these, the person shall notify the department and request department approval. A notification and request for approval under this subdivision shall not be considered an admission of liability under section 20126.

(b) Response activities that rely on GSI monitoring wells to demonstrate compliance under subsection (1)(a).

(c) Except as provided in subdivision (a) and subsection (6), response activities that rely on monitoring from alternative monitoring points to demonstrate compliance with subsection (1)(a) if the person submits to the department a notice of alternative monitoring points at least 30 days prior to relying on those alternative monitoring points that contains substantiating evidence that the alternative monitoring points comply with this section.

(d) Response activities implemented by a person who is not liable under section 20126 that rely on a modeling demonstration, or rely on an ecological demonstration, or a combination of these, to demonstrate compliance with subsection (1)(a).

(6) A person shall proceed under section 20114b to undertake response activities that rely on monitoring from alternative monitoring points or rely on an ecological demonstration, a modeling demonstration, or a combination of these, to demonstrate compliance with subsection (1)(a) if 1 or more of the following conditions apply to the venting groundwater:

(a) An applicable criterion is based on acute toxicity endpoints.

(b) The venting groundwater contains a bioaccumulative chemical of concern as identified in the water quality standards for surface waters developed pursuant to part 31 and for which the person is liable under this part.

(c) The venting groundwater is entering a surface water body protected for coldwater fisheries identified in the following publications:

(*i*) "Coldwater Lakes of Michigan," as published in 1976 by the department of natural resources.

(*ii*) "Designated Trout Lakes and Regulations," issued September 10, 1998, by the director of the department of natural resources under the authority of part 411.

(*iii*) "Designated Trout Streams for the State of Michigan," as issued under order of the director of the department of natural resources, FO-210.08, on November 8, 2007.

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(d) The venting groundwater is entering a surface water body designated as an outstanding state resource water or outstanding international resource water as identified in the water quality standards for surface waters developed pursuant to part 31.

(7) A person shall proceed under section 20114b to undertake response activities that rely on monitoring from alternative monitoring points, or rely on an ecological demonstration, or rely on a modeling demonstration or that use mixing zone-based GSI criteria, or any combination of these, as applicable, to demonstrate compliance with subsection (1)(b), (c), (d), (e), or (f).

(8) Alternative monitoring points may be used to demonstrate compliance with subsection (1) if the alternative monitoring points meet the following standards:

(a) The locations where venting groundwater enters surface water have been reasonably identified to allow monitoring for the evaluation of compliance with criteria. This identification shall include all of the following:

(*i*) Identification of the location of alternative monitoring points within areas of venting groundwater.

(*ii*) Documentation of the approximate boundaries of the areas where the groundwater plume vents to surface water. This documentation shall include information about the substrate character and geology in the areas where groundwater vents to surface water.

(*iii*) Documentation that the venting area identified and alternative monitoring points include points that are reasonably representative of the higher concentrations of hazardous substances present in the groundwater at the GSI.

(b) The alternative monitoring points allow for venting groundwater to be sampled at the GSI. Devices used for sampling at alternative monitoring points may be beyond the water's edge and on top of or into the sediments, at the GSI.

(c) Sentinel monitoring points are used in conjunction with the alternative monitoring points for a period as needed to assure that any potential exceedance of an applicable surface water quality standard can be identified with sufficient notice to allow additional response activity, if needed, to be implemented that will address the exceedance. Sentinel monitoring points shall include, at a minimum, monitoring points upland of the surface water body.

(9) An ecological demonstration may be used to demonstrate compliance with subsection (1) if the ecological demonstration meets the following:

(a) The boundaries of the area where the groundwater plume vents to surface water are documented as provided in subsection (8)(a)(*ii*).

(b) Sampling data for the area described in subdivision (a), when compared to other reasonably proximate areas of that surface water body, do not show an impairment of existing or designated uses for that surface water body caused by, or contributed to by, the venting plume, or do not show that the venting plume will cause or contribute to impairment of existing or designated uses of that surface water body in a situation where the area of the surface water immediately outside the venting area of the venting plume shows an impairment of existing or designated uses.

(c) Sampling data for the area described in subdivision (a) do not show exceedances of applicable criteria under subsection (1) in the surface water body caused by, or contributed to by, the venting plume.

(d) The sampling data in subdivisions (b) and (c) may be data on benthic organisms, fish, and the water column of the surface water, which data may be in the form of an in situ bioassay or a biological community assessment.

(e) Sentinel monitoring in on-land wells is performed for a period as needed to show that the groundwater plume is not likely to migrate to the surface water body and vent in the future in a mass amount and rate that would impair the existing or designated uses for that surface water body, or cause or contribute to exceedances of surface water quality standards in the surface water body.

(10) A modeling demonstration may be used to demonstrate compliance with subsection (1) if the modeling demonstration meets all of the following:

(a) The modeling methodology is generally recognized as a means to model venting groundwater plumes or is an innovative method that is scientifically justifiable.

(b) The results of the modeling show that the venting plume at the GSI complies with the applicable criteria under subsection (1) or supports the ecological demonstration, as applicable.

(c) The model is supported by site-specific information and appropriate field measurements.

(11) If alternative monitoring points or an ecological demonstration or a modeling demonstration or a combination of these is used for the response activity and sentinel wells are installed, a contingency plan for potential additional response activity may be required.

(12) If a person intends to utilize mixing zone-based GSI criteria under subsection (1)(c) or site-specific criteria under subsection (1)(d) in conjunction with alternative monitoring points, an ecological

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demonstration, or a modeling demonstration, or a combination of these, the person shall submit to the department a response activity plan that includes the following:

(a) A demonstration of compliance with the standards in subsection (6), (7), or (8), as applicable.

(b) If compliance with a mixing zone-based groundwater-surface water interface criterion under subsection (1)(c) is to be determined with data from the alternative monitoring points, documentation that it is possible to reasonably estimate the volume and rate of venting groundwater.

(c) A site-specific monitoring plan that takes into account the basis for the site-specific criterion or mixing zone criterion.

(13) If there is an exceedance of an applicable GSI criterion based on acute toxicity at a compliance monitoring point applicable at a particular facility, then action shall be taken as follows:

(a) A person that is implementing the response activity at that facility and that determines that there is an exceedance shall notify the department of that condition within 7 days of obtaining knowledge that the exceedance is occurring.

(b) If the person described in subdivision (a) is a person liable under section 20126, then that person shall, within 30 days of the date on which notice is required under subdivision (a), do 1 or more of the following:

(*i*) Commence response activity to address the exceedance at the applicable compliance monitoring point and submit a schedule to the department for the response activity.

(*ii*) Submit a notice of intent to the department to propose an alternative monitoring point or perform an ecological demonstration or perform a modeling demonstration or a combination of these. The notice shall include a schedule for submission of the proposal.

(*iii*) Submit a notice of intent to the department to propose a site-specific criterion or a mixing zone criterion under sections 20120a and 20120b. The notice shall include a schedule for submission of the proposal.

(c) The department may approve a schedule as submitted under subdivision (b) or direct reasonable modifications in the schedule. The department may grant extensions of time for actions required under subdivision (b) and for activities in an approved or department-modified schedule if the person is acting in good faith and site conditions inhibit progress or completion of the activity. The department's decision to grant an extension or impose a schedule modification shall consider the practical problems associated with carrying out the response activity and the nature and extent of the exceedances of applicable GSI criteria.

(14) Response activity beyond evaluations shall not be required if venting groundwater has no effect or only a de minimis effect on a surface water body. A determination under this subsection may be based on mass flow and rate of groundwater movement calculations. A person evaluating a venting plume that determines that the plume has no effect or only a de minimis effect on a surface water body shall notify the department of the determination. The department may, within 90 days after receipt of the determination, disapprove the determination. If the department does not notify the person that it disapproves the determination within the 90-day period, then the person's determination shall be final.

(15) If a person has controlled the source of groundwater contamination and has demonstrated that compliance with GSI criteria developed under this part is unachievable, that person may file a technical impracticability waiver request with the department. The technical impracticability waiver shall document the reasons why compliance is unachievable. The department shall respond to the waiver within 180 days with an approval, request for additional information, or denial that provides a detailed description of the reasons for denial.

(16) Natural attenuation of hazardous substances in venting groundwater upgradient of the GSI is an acceptable form of remediation and may be relied upon in lieu of any active remediation of the groundwater. Natural attenuation may be occurring by way of dispersion, diffusion, sorption, degradation, transformative reactions, and other methods.

(17) A permit shall not be required under part 31 for any venting groundwater contamination plume that is addressed under this section.

(18) Wetlands shall be protected for the groundwater surface water pathway to the extent that particular designated uses, as defined by part 31, which are specific to that wetland would otherwise be impaired by a groundwater contamination plume venting to surface water in the wetland.

(19) If a groundwater contamination plume is entering a sewer that discharges to surface water, and the GSI pathway is relevant, all of the following apply:

(a) If the groundwater enters a storm sewer that is owned or operated by an entity that is subject to federal municipal separate storm sewer system regulations and a part 31 permit for the discharges from the system, the contaminated groundwater entering the sewer is subject to regulation by the entity's ordinance regarding illicit discharges, but the regulation of the contaminated groundwater shall not prevent the use of subdivision (b) or other provisions of this section to determine the need for response activity under this part.

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(b) All of the following apply:

(*i*) The compliance monitoring point may be a groundwater monitoring well, if proposed by the person performing the response action, or that person may choose another point for measuring compliance under this subparagraph.

(*ii*) A mixing zone may be applied that accounts for the mixing which occurs in the receiving surface water into which the sewer system discharges.

(*iii*) Attenuation that occurs in the sewer system prior to the sewer system outfall to surface water shall be considered.

(*iv*) The compliance point is at the sewer system outfall to surface water, which shall account for any applicable mixing zone for the sewer system outfall.

(*v*) Monitoring to determine compliance may be performed at a location where the contaminated groundwater enters the sewer or downstream from that location but upstream of the sewer outfall at the surface water, if practicable and representative. Appropriate back calculation from the compliance point to the monitoring point may be applied to account for mixing and other attenuation that occurs in the sewer system before the compliance point. As appropriate, such a monitoring point may require another monitoring point in the sewer system upstream from the area where the contaminated groundwater enters the sewer. Upstream sampling in the sewer may be performed to determine source contribution.

(*vi*) The contaminant mass flow, and the rate and amount of groundwater flow, into the sewer may be considered and may result in a determination that the migration into the sewer is de minimis and does not require any response activity in addition to the evaluation that leads to such determination.

(c) Factors in subdivision (b) may be considered and applied to determine if an illicit discharge is occurring and how to regulate the discharge.

(20) If the department denies a response activity plan containing a proposal for alternative monitoring points, an ecological demonstration, or a modeling demonstration, or a combination of these, the department shall state the reasons for denial, including the scientific and technical basis for the denial. A person may appeal a decision of the department in a response activity plan or no further action report regarding venting groundwater as a scientific or technical dispute under section 20114e.

(21) This section is intended to allow a person to demonstrate compliance with requirements under this part for a response activity involving venting groundwater, and, for this purpose, this section shall be given retroactive application and shall be available for use by such person. A person performing response activity involving venting groundwater under any judgment, consent judgment, order, consent order, or agreement that was entered prior to the effective date of the 2012 amendatory act that amended this section may pursue, alter, or terminate such response activity based on any provision of this section subject to any necessary entry or approval by the court in a case of a judgment, consent judgment, or court order or any necessary amendment procedure to amend an agreement. The department shall not oppose use of any provision of this section as grounds to amend an agreement or for a court to modify or terminate response activity obligations involving venting groundwater under a judgment, consent judgment, or court order. A person performing response activity involving venting groundwater under any remedial action plan, interim response plan designed to meet criteria, interim response action plan, or response activity plan that was approved by the department prior to the effective date of the 2012 amendatory act that amended this section may submit an amended plan to the department for approval that pursues, alters, or terminates response activity based on any provision of this section. The department shall not oppose use of any provision of this section in approving an amended plan.

(22) A person that undertakes response activity under subsection (4) or that takes action under subsection (13)(b) shall not be considered to be making an admission of liability by undertaking such response activities or taking such action.

(23) As used in this section:

(a) "Alternative monitoring points" means alternative monitoring points authorized under subsection (8).

(b) "Ecological demonstration" means an ecological demonstration authorized under subsection (1)(e).

(c) "GSI" means groundwater-surface water interface, which is the location at which groundwater enters surface water.

(d) "GSI monitoring well" means a vertical well installed in the saturated zone as close as practicable to surface water with a screened interval or intervals that are representative of the groundwater venting to the surface water.

(e) "Mixing zone-based GSI criteria" means mixing zone-based GSI criteria authorized under subsection (1)(c).

(f) "Modeling demonstration" means a modeling demonstration authorized under subsection (1)(f).

(g) "Surface water" does not include any of the following:

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(*i*) Groundwater.

(*ii*) Hyporheic zone water.

(*iii*) Water in enclosed sewers.

(*iv*) Water in drainage ways and ponds used solely for wastewater or storm water conveyance, treatment, or control.

(*v*) Water in subgrade utility runs and utility lines and permeable fill in and around them.

History: Add. 2010, Act 228, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 190, Imd. Eff. June 20, 2012.

Compiler's note: Former MCL 324.20120e, which pertained to recalculation of cleanup criteria, was repealed by Act 603 of 2006, Eff. Jan. 3, 2008.

Enacting section 1 of Act 190 of 2012 provides:

"Enacting section 1. R 299.5716 of the Michigan administrative code is rescinded."

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20121 Land or resource use restrictions; restrictive covenants or other instruments.

Sec. 20121. (1) A person may impose land or resource use restrictions to reduce or restrict exposure to hazardous substances, to eliminate a potential exposure pathway, to assure the effectiveness and integrity of containment or exposure barriers, to provide for access, or to otherwise assure the effectiveness and integrity of response activities undertaken at a property.

(2) A restrictive covenant used to impose land or resource use restrictions under subsection (1) shall, at a minimum, include all of the following:

(a) A legal description of the property that is subject to the restrictions that is sufficient to identify the property and is sufficient to record the document with the register of deeds for the county where the property is located. If the property being restricted constitutes a portion of a parcel, the restrictive covenant shall also include 1 of the following:

(*i*) A legal description and a scaled drawing of the portion that is restricted.

(*ii*) A survey of the portion that is restricted.

(*iii*) Another type of description or drawing approved by the department.

(b) A brief narrative description of response activities and environmental contamination at the property or identify a publicly accessible information repository where that information may be obtained, such as a public library.

(c) A description of the activity and use limitations imposed on the property. The description should be drafted, to the extent practicable, using plain, everyday language in an effort to make the activity and use limitations understandable to the reader without having to reference statutory or regulatory text or department guidance.

(d) A grant to the department of the ability to enforce the restrictive covenant by legal action in a court of appropriate jurisdiction.

(e) A signature of the property owner or someone with the express written consent of the property owner unless the restrictive covenant has been ordered by a court of competent jurisdiction. For condominium common elements and similar commonly owned property, the restrictive covenant may be signed by an authorized person.

(3) In addition to the requirements of subsection (2), a restrictive covenant may contain other information, restrictions, requirements, and rights agreed to by the persons signing it, including, but not limited to, 1 or more of the following:

(a) A provision requiring notice to the department or other persons upon transfer or before construction or changes in use that could affect environmental contamination or increase exposure at the property.

(b) A provision granting rights of access to the department or other persons. These rights may include, but are not limited to, the right to enter the property for the purpose of monitoring compliance with the restrictive covenant, the right to take samples, and the right to implement response activities.

(c) A provision subordinating a property interest that has priority, if agreed to by the person that owns the superior interest.

(d) A provision granting the right to enforce the restrictive covenant to persons in addition to the department, including, but not limited to, the local unit of government in which the property is located or the United States environmental protection agency.

(e) A provision obligating the owner of the land subject to the restrictive covenant to inspect or maintain exposure barriers, permanent markers, fences, or other aspects of the response action or remedy.

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(f) A provision limiting the restrictive covenant to a specific duration, or terminating the restrictive covenant upon the occurrence of a specific event or condition, such as the completion of additional response activities that are approved by the department.

(g) A provision providing notice of hazardous substances that exceed aesthetic-based cleanup criteria.

(4) A restrictive covenant used to impose land or resource use restrictions under this section shall be recorded with the register of deeds for the county where the property is located.

(5) A restrictive covenant under this section that is recorded under subsection (4) does both of the following:

(a) Runs with the land.

(b) Is perpetual unless, by its terms, it is limited to a specific duration or is terminated by the occurrence of a specific event.

(6) Upon recording, a copy of the restrictive covenant shall be provided to the department together with a notice that includes the street address or parcel number for the property or properties subject to the covenant. A restrictive covenant that meets the requirements of this section need not be approved by the department except as expressly required elsewhere in this part.

(7) The following instruments may impose the land or resource use restrictions described in subsection (1) if they meet the requirements of a restrictive covenant under this section:

(a) A conservation easement.

(b) A court order or judicially approved settlement involving the property.

(8) An institutional control may be used to impose the land or resource use restrictions described in subsection (1) instead of or in addition to a restrictive covenant. Institutional controls that may be considered include, but are not limited to, local ordinances or state laws and regulations that limit or prohibit the use of contaminated groundwater, prohibit the raising of livestock, prohibit development in certain locations, or restrict property to certain uses, such as a zoning ordinance. A local ordinance that serves as an institutional control under this section shall be published and maintained in the same manner as a zoning ordinance and shall include a requirement that the local unit of government notify the department at least 30 days prior to adopting a modification to the ordinance or prior to the lapsing or revocation of the ordinance.

(9) Alternative instruments and means may be used, with department approval, to impose the land or resource use restrictions described in subsection (1), including, but not limited to, licenses and license agreements, contracts with local, state, or federal units of government, health codes or regulations, or government permitting requirements.

(10) The department, with the approval of the state administrative board, may place restrictive covenants described in this section on deeds of state-owned property.

(11) A restrictive covenant recorded pursuant to this part, whether recorded before or after the effective date of the amendatory act that added this section, is valid and enforceable even if 1 or more of the following situations exist:

(a) It is not appurtenant to an interest in real property.

(b) The right to enforce it can be or has been assigned.

(c) It is not of a character that has been recognized traditionally at common law.

(d) It imposes a negative burden.

(e) It imposes an affirmative obligation on a person having an interest in the real property.

(f) The benefit or burden does not touch or concern real property.

(g) There is no privity of estate or contract.

(h) The owner of the land subject to the restrictive covenant and the person benefited or burdened are the same person.

(12) Restrictive covenants or other instruments that impose land or resource use restrictions that were recorded before the effective date of the amendatory act that added this section are not invalidated or made unenforceable by this section. Except as provided in subsection (11), this section only applies to a restrictive covenant or other instrument recorded after the effective date of the amendatory act that added this section. This section does not invalidate or render unenforceable any instrument or interest that is otherwise enforceable under the law of this state.

History: Add. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Compiler's note: Former MCL 324.20121, which pertained to creation of office of environmental cleanup facilitation, was repealed by Act 71 of 1995, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

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Popular name: NREPA

324.20122-324.20125 Repealed. 1995, Act 71, Imd. Eff. June 5, 1995.

Compiler's note: The repealed sections pertained to creation and duties of science advisory council, report to legislature, and approval of remedial action plans.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20126 Liability under part.

Sec. 20126. (1) Notwithstanding any other provision or rule of law and except as provided in subsections (2), (3), (4), and (5) and section 20128, the following persons are liable under this part:

(a) The owner or operator of a facility if the owner or operator is responsible for an activity causing a release or threat of release.

(b) The owner or operator of a facility at the time of disposal of a hazardous substance if the owner or operator is responsible for an activity causing a release or threat of release.

(c) An owner or operator of a facility who becomes an owner or operator on or after June 5, 1995, unless the owner or operator complies with either of the following:

(*i*) A baseline environmental assessment is conducted prior to or within 45 days after the earlier of the date of purchase, occupancy, or foreclosure, and the owner or operator provides the baseline environmental assessment to the department and subsequent purchaser or transferee within 6 months after the earlier of the date of purchase, occupancy, or foreclosure. For purposes of this section, assessing property to conduct a baseline environmental assessment does not constitute occupancy.

(*ii*) The owner or operator requests and receives from the department a determination that its failure to comply with the time frames in subparagraph (*i*) when conducting and submitting a baseline environmental assessment was inconsequential.

(d) A person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by the person, by any other person, at a facility owned or operated by another person and containing the hazardous substance. This subdivision does not include any of the following:

(*i*) A person who, on or after June 5, 1995, arranges for the sale or transport of a secondary material for use in producing a new product. As used in this subparagraph, secondary material means scrap metal, paper, plastic, glass, textiles, or rubber, that has demonstrated reuse or recycling potential and has been separated or removed from the solid waste stream for reuse or recycling, whether or not subsequent separation and processing is required, if substantial amounts of the material are consistently used in the manufacture of products that may otherwise be produced from a raw or virgin material.

(*ii*) A person who, prior to June 5, 1995, arranges for the sale or transport of a secondary material for use in producing a new product unless the state has incurred response activity costs associated with these secondary materials prior to December 17, 1999. As used in this subparagraph, secondary material means scrap metal, paper, plastic, glass, textiles, or rubber, that has demonstrated reuse or recycling potential and has been separated or removed from the solid waste stream for reuse or recycling, whether or not subsequent separation and processing is required, if substantial amounts of the material are consistently used in the manufacture of products that may otherwise be produced from a raw or virgin material.

(*iii*) A person who arranges the lawful transport or disposal of any product or container that is commonly used in a residential household, is in a quantity commonly used in a residential household, and was used in the person's residential household.

(*iv*) A person who stores or uses or arranges for the storage or use of a beneficial use by-product or inert material in compliance with part 115.

(e) A person who accepts or accepted any hazardous substance for transport to a facility selected by that person.

(f) The estate or trust of a person described in subdivisions (a) to (e).

(2) Subject to section 20107a, an owner or operator who complies with subsection (1)(c)(*i*) and (*ii*) is not liable for contamination existing at the facility at the earlier of the date of purchase, occupancy, or foreclosure, unless the person is responsible for an activity causing the contamination existing at the facility. Subsection (1)(c) does not alter a person's liability with regard to a subsequent release or threat of release at a facility if the person is responsible for an activity causing the subsequent release or threat of release.

(3) Notwithstanding subsection (1), the following persons are not liable under this part with respect to

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contamination at a facility resulting from a release or threat of release unless the person is responsible for an activity causing that release or threat of release:

(a) The state or a local unit of government that acquired ownership or control of a facility involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title or control by virtue of its governmental function or as provided in this part; a local unit of government to which ownership or control of a facility is transferred by the state or by another local unit of government that is not liable under subsection (1); or the state or a local unit of government that acquired ownership or control of a facility by seizure, receivership, or forfeiture pursuant to the operation of law or by court order.

(b) A state or local unit of government that holds or acquires an easement interest in a facility, holds or acquires an interest in a facility by dedication in a plat, or by dedication pursuant to 1909 PA 283, MCL 220.1 to 239.6, or otherwise holds or acquires an interest in a facility for a transportation or utility corridor, including sewers, pipes, and pipelines, or public right of way.

(c) A person who holds an easement interest in a facility or holds a utility franchise to provide service, for the purpose of conveying or providing goods or services, including, but not limited to, utilities, sewers, roads, railways, and pipelines; or a person that acquires access through an easement.

(d) A person who owns severed subsurface mineral rights or severed subsurface formations or who leases subsurface mineral rights or formations.

(e) The state or a local unit of government that leases property to a person if the state or the local unit of government is not liable under this part for environmental contamination at the property.

(f) A person who owns or occupies residential real property if hazardous substance use at the property is consistent with residential use.

(g) A person who acquires a facility as a result of the death of the prior owner or operator of the facility, whether by inheritance, devise, or transfer from an inter vivos or testamentary trust.

(h) A person who did not know and had no reason to know that the property was a facility. To establish that the person did not know and did not have a reason to know that the property was a facility, the person shall have undertaken at the time of acquisition all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice. A determination of liability under this subdivision shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated by a hazardous substance, commonly known or reasonable ascertainable information about the property, the obviousness of the presence or likely presence of a release or threat of release at the property, and the ability to detect a release or threat of release by appropriate inspection.

(i) A utility performing normal construction, maintenance, and repair activities in the normal course of its utility service business. This subdivision does not apply to property owned by the utility.

(j) A lessee who uses the leased property for a retail, office, or commercial purpose regardless of the level of the lessee's hazardous substance use.

(k) A person who holds a license, easement, or lease, or who otherwise occupies or operates property, for the purpose of siting, constructing, operating, or removing a wind energy conversion system or any component of a wind energy conversion system. As used in this subdivision, "wind energy conversion system" means that term as defined in section 13 of the clean, renewable, and efficient energy act, 2008 PA 295, MCL 460.1013.

(*l*) A person who owns or occupies a residential condominium unit for both of the following:

(*i*) Contamination of the unit if hazardous substance use within the unit is consistent with residential use.

(*ii*) Contamination of any general common element, limited common element, or common area in which the person has an ownership interest or right of occupation by reason of owning or occupying the residential condominium unit.

(4) Notwithstanding subsection (1), the following persons are not liable under this part:

(a) The owner or operator of property at or from which there is a release or threat of release and the release or threat of release is subject to corrective action under part 111 or is being addressed as part of a corrective action under part 111. A corrective action under part 111 may be implemented using processes and cleanup criteria, as appropriate, under this part. However, a release or threat of release that is subject to or that has been or is being addressed through part 111 corrective action shall not also be subject to remediation and department oversight under this part.

(b) A lender that engages in or conducts a lawful marshalling or liquidation of personal property if the lender does not cause or contribute to the environmental contamination. This includes holding a sale of personal property on a portion of the facility.

(c) The owner or operator of property onto which contamination has migrated unless that person is

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responsible for an activity causing the release that is the source of the contamination.

(d) A person who owns or operates a facility in which the release or threat of release was caused solely by 1 or more of the following:

(*i*) An act of God.

(*ii*) An act of war.

(*iii*) An act or omission of a third party other than an employee or agent of the person or a person in a contractual relationship existing either directly or indirectly with a person who is liable under this section.

(e) Any person for environmental contamination addressed in a no further action report that is approved by the department or is considered approved under section 20114d. However, a person may be liable under this part for the following:

(*i*) A subsequent release not addressed in the no further action report if the person is otherwise liable under this part for that release.

(*ii*) Environmental contamination that is not addressed in the no further action report and for which the person is otherwise liable under this part.

(*iii*) If the no further action report relies on land use or resource use restrictions, an owner or operator who desires to change those restrictions is responsible for any response activities necessary to comply with this part for any land use or resource use other than the land use or resource use that was the basis for the no further action report.

(*iv*) If the no further action report relies on monitoring necessary to ensure the effectiveness and integrity of the remedial action, an owner or operator who is otherwise liable for environmental contamination addressed in a no further action report is liable under this part for additional response activities necessary to address any potential exposure to the environmental contamination demonstrated by the monitoring in excess of the levels relied on in the no further action report.

(*v*) If the remedial actions that were the basis for the no further action report fail to meet performance objectives that are identified in the no further action report, an owner or operator who is otherwise liable for environmental contamination addressed in the no further action report is liable under this part for response activities necessary to satisfy the performance objectives or otherwise comply with this part.

(5) Notwithstanding any other provision of this part, the state or a local unit of government or a lender who has not participated in the management of the facility is not liable under this part for costs or damages as a result of response activity taken in response to a release or threat of release. For a lender, this subsection applies only to response activity undertaken prior to foreclosure. This subsection does not preclude liability for costs or damages as a result of gross negligence, including reckless, willful, or wanton misconduct, or intentional misconduct by the state or local unit of government.

(6) In establishing liability under this section, the department bears the burden of proof.

(7) Notwithstanding subsection (1)(c), if the owner or operator of the facility became the owner or operator of the facility on or after June 5, 1995 and prior to March 6, 1996, and the facility contains an underground storage tank system as defined in part 213, that owner or operator is liable under this part only if the owner or operator is responsible for an activity causing a release or threat of release.

(8) An owner or operator who was in compliance with subsection (1)(c)(*i*) and (*ii*) prior to December 14, 2010 is considered to be in compliance with subsection (1)(c)(*i*) and (*ii*).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 1996, Act 115, Imd. Eff. Mar. 6, 1996;—Am. 1999, Act 196, Imd. Eff. Dec. 17, 1999;—Am. 2010, Act 227, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 179, Imd. Eff. June 17, 2014;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20126a Joint several liability; costs of amounts recoverable; interest; recovery; permitted release; action by attorney general; action brought by state or other person.

Sec. 20126a. (1) Except as provided in section 20126(2), a person who is liable under section 20126 is jointly and severally liable for all of the following:

(a) All costs of response activity lawfully incurred by the state relating to the selection and implementation of response activity under this part.

(b) Any other costs of response activity reasonably incurred under the circumstances by any other person.

(c) Damages for the full value of injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release.

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(2) The costs of response activity recoverable under subsection (1) shall also include all costs of response activity reasonably incurred by the state prior to the promulgation of rules relating to the selection and implementation of response activity under this part, excepting those cases where cost recovery actions have been filed before July 12, 1990. A person challenging the recovery of costs under this subdivision has the burden of establishing that the costs were not reasonably incurred under the circumstances that existed at the time the costs were incurred.

(3) The amounts recoverable in an action under this section shall include interest. This interest shall accrue from the date payment is demanded in writing, or the date of the expenditure or damage, whichever is later. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified in section 6013(8) of the revised judicature act of 1961, 1961 PA 236, MCL 600.6013.

(4) In the case of injury to, destruction of, or loss of natural resources under subsection (1)(c), liability shall be to the state for natural resources belonging to, managed by, controlled by, appertaining to, or held in trust by the state or a local unit of government. Sums recovered by the state under this part for natural resource damages shall be retained by the department, for use only to restore, repair, replace, or acquire the equivalent of the natural resources injured or acquire substitute or alternative resources. There shall be no double recovery under this part for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, replacement, or acquisition, for the same release and natural resource.

(5) A person shall not be required under this part to undertake response activity for a permitted release. Recovery by any person for response activity costs or damages resulting from a permitted release shall be pursuant to other applicable law, in lieu of this part. With respect to a permitted release, this subsection does not affect or modify the obligations or liability of any person under any other state law, including common law, for damages, injury, or loss resulting from a release of a hazardous substance or for response activity or the costs of response activity.

(6) If the department determines that there may be an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment because of an actual or threatened release from a facility, the attorney general may bring an action against any person who is liable under section 20126 or any other appropriate person to secure the relief that may be necessary to abate the danger or threat. The court has jurisdiction to grant such relief as the public interest and the equities of the case may require.

(7) The costs recoverable under this section may be recovered in an action brought by the state or any other person.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 227, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20127 Repealed. 1995, Act 71, Imd. Eff. June 5, 1995.

Compiler's note: The repealed section pertained to liability.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20128 Liability of response activity contractor; effect of warranty; liability of employer to employee; governmental employee exempt from liability; definitions; liability of person in rendering care, assistance, or advice on release of petroleum; effect of exception under subsection (6); burden of establishing liability.

Sec. 20128. (1) Except as otherwise provided in this section, a person who is a response activity contractor for any release or threatened release is not liable to any person for injuries, costs, damages, expenses, or other liability, including, but not limited to, claims for indemnification or contribution and claims by third parties for death, personal injuries, illness, or loss of or damages to property or economic loss that result from the release or threatened release. This subsection does not apply if a release or threatened release is caused by conduct of the response activity contractor that is negligent, grossly negligent, or that constitutes intentional misconduct.

(2) Subsection (1) does not affect the liability of a person under any warranty under federal, state, or common law. This subsection does not affect the liability of an employer who is a response activity contractor

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to any employee of the employer under law, including any law relating to worker's compensation.

(3) An employee of this state or a local unit of government who provides services relating to a response activity while acting within the scope of his or her authority as a governmental employee has the same exemption from liability as is provided to the response activity contractor under subsection (1).

(4) Except as provided in this section, this section does not affect the liability under this part or under any other federal or state law of any person.

(5) As used in subsections (1) to (4):

(a) "Response activity contract" means a written contract or agreement entered into by a response activity contractor with 1 or more of the following:

(*i*) The department.

(*ii*) The department of public health.

(*iii*) A person who is arranging for response activity under this part.

(b) "Response activity contractor" means 1 or both of the following:

(*i*) A person who enters into a response activity contract with respect to a release or threatened release and is carrying out the terms of a contract.

(*ii*) A person who is retained or hired by a person described in subparagraph (*i*) to provide any service relating to a response activity.

(6) Notwithstanding any other provision of law, a person is not liable for response activity costs or damages that result from an act or a failure to act in the course of rendering care, assistance, or advice with respect to a release of petroleum into or on the surface waters of the state or on the adjoining shorelines to the surface waters of the state if the act or failure to act was consistent with the national contingency plan or as otherwise directed by the federal on-scene coordinator or the director. This subsection does not apply to any of the following:

(a) A person who is liable under section 20126 who is a responsible party.

(b) An action with respect to personal injury or wrongful death.

(c) A person that is grossly negligent or engages in willful misconduct.

(7) A person who is liable under section 20126 who is a responsible party is liable for any response activity costs and damages that another person is relieved of under subsection (6).

(8) As used in this subsection and subsections (6) and (7):

(a) "Damages" means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the release or threatened release of petroleum.

(b) "Federal on-scene coordinator" means the federal official predesignated by the United States environmental protection agency or the United States coast guard to coordinate and direct federal responses under the national contingency plan, or the official designated by the lead agency to coordinate and direct response activity under the national contingency plan.

(c) "National contingency plan" means the national contingency plan prepared and published under section 311 of title III of the federal water pollution control act, chapter 758, 86 Stat. 862, 33 U.S.C. 1321.

(d) "Petroleum" means that term as it is defined in part 213.

(e) "Responsible party" means a responsible party as defined under section 1001 of title I of the oil pollution act of 1990, Public Law 101-380, 33 U.S.C. 2701.

(9) This section does not affect a plaintiff's burden of establishing liability under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20129 Divisibility of harm and apportionment of liability; liability for indivisible harm; contribution; factors in allocating response activity costs and damages; reallocation of uncollectible amount; effect of consent order; resolution of liability in approved settlement; contribution protection; effect of state obtaining less than complete relief; contribution from person not party to consent order; subordinate rights in action for contribution.

Sec. 20129. (1) If 2 or more persons acting independently are liable under section 20126 and there is a reasonable basis for division of harm according to the contribution of each person, each person is subject to liability under this part only for the portion of the total harm attributable to that person. However, a person seeking to limit his or her liability on the grounds that the entire harm is capable of division has the burden of

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proof as to the divisibility of the harm and as to the apportionment of liability.

(2) If 2 or more persons are liable under section 20126 for an indivisible harm, each person is subject to liability for the entire harm.

(3) A person may seek contribution from any other person who is liable under section 20126 during or following a civil action brought under this part. This subsection does not diminish the right of a person to bring an action for contribution in the absence of a civil action by the state under this part. In a contribution action brought under this part, the court shall consider all of the following factors in allocating response activity costs and damages among liable persons:

(a) Each person's relative degree of responsibility in causing the release or threat of release.

(b) The principles of equity pertaining to contribution.

(c) The degree of involvement of and care exercised by the person with regard to the hazardous substance.

(d) The degree of cooperation by the person with federal, state, or local officials to prevent, minimize, respond to, or remedy the release or threat of release.

(e) Whether equity requires that the liability of some of the persons should constitute a single share.

(4) If, in an action for contribution under subsection (3), the court determines that all or part of a person's share of liability is uncollectible from that person, then the court may reallocate any uncollectible amount among the other liable persons according to the factors listed in subsection (3). A person whose share is determined to be uncollectible continues to be subject to contribution and to any continuing liability to the state.

(5) A person who has resolved his or her liability to the state in an administrative or judicially approved consent order is not liable for claims for contribution regarding matters addressed in the consent order. The consent order does not discharge any of the other persons liable under section 20126 unless the terms of the consent order provide for this discharge, but the potential liability of the other persons is reduced by the amount of the consent order.

(6) A person who is not liable under this part, including a person who was issued a written determination under former section 20129a affirming that the person meets the criteria for an exemption from liability, and who is otherwise in compliance with section 20107a, shall be considered to have resolved his or her liability to the state in an administratively approved settlement under the comprehensive environmental response, compensation, and liability act, 42 USC 9601 to 9675, and shall by operation of law be granted contribution protection under 42 USC 9613(f)(2) and under this part in the same manner that contribution protection is provided pursuant to subsection (5).

(7) If the state obtains less than complete relief from a person who has resolved his or her liability to the state in an administrative or judicially approved consent order under this part, the state may bring an action against any other person liable under section 20126 who has not resolved his or her liability.

(8) A person who has resolved his or her liability to the state for some or all of a response activity in an administrative or judicially approved consent order may seek contribution from any person who is not a party to the consent order described in subsection (5).

(9) In an action for contribution under this section, the rights of any person who has resolved his or her liability to the state is subordinate to the rights of the state, if the state files an action under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 230, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20129a Repealed. 2010, Act 228, Imd. Eff. Dec. 14, 2010.

Compiler's note: The repealed section pertained to petition for exemption from liability of owner or operator of facility after June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20130 Indemnification, hold harmless, or similar agreement or conveyance; subrogation.

Sec. 20130. (1) An indemnification, hold harmless, or similar agreement or conveyance is not effective to transfer from a person who is liable under section 20126 to the state for evaluation or response activity costs or damages for a release or threat of release to any other person the liability imposed under this part. This

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section does not bar an agreement to insure, hold harmless, or indemnify a party to the agreement for liability under this part.

(2) This part does not bar a cause of action that a person subject to liability under this part, or a guarantor, has or would have by reason of subrogation or otherwise against any person.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20131 Limitations on liability; circumstances requiring total costs and damages.

Sec. 20131. (1) Except as provided in subsection (2), the liability under this part for each release or threat of release shall not exceed the total of all the costs of response activities, fines, and exemplary damages, plus $50,000,000.00 damages for injury to, destruction of, or loss of natural resources resulting from the release or threat of release, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release or threat of release.

(2) Notwithstanding the limitations in subsection (1), the liability of a person under this part shall be the full and total costs and damages listed in subsection (1), in either of the following circumstances:

(a) The release or threatened release of a hazardous substance was the result of willful misconduct or gross negligence of the party.

(b) The primary cause of the release or threat of release was a knowing violation of applicable safety, construction, or operating standards or regulations.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20132 Covenant not to sue generally; future enforcement action.

Sec. 20132. (1) The state may provide a person with a covenant not to sue concerning any liability to the state under this part, including future liability, resulting from a release or threatened release addressed by response activities, whether that action is on a facility or off a facility, if each of the following is met:

(a) The covenant not to sue is in the public interest.

(b) The covenant not to sue would expedite response activity consistent with rules promulgated under this part.

(c) There is full compliance with a consent order under this part for response to the release or threatened release concerned.

(d) The response activity has been approved by the department.

(2) The state shall provide a person, to which the department is authorized under subsection (1) to issue a covenant not to sue for the portion of response activity described in subdivision (a) or (b), with a covenant not to sue with respect to future liability to the state under this part for a future release or threatened release, and a person provided the covenant not to sue is not liable to the state under section 20126 with respect to that release or threatened release at a future time. The portion of response activity to which the covenant not to sue pertains is either of the following:

(a) The transport and secure disposition off site of hazardous substances in a facility meeting the requirements of sections 3004(c), (d), (e), (f), (g), (m), (o), (p), (u), and (v) and 3005(c) of subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6924 and 6925, if the department has required off-site disposition and has rejected proposed remedial action that is consistent with the rules promulgated under this part and that does not include off-site disposition.

(b) The treatment of hazardous substances so as to destroy, eliminate, or permanently immobilize the hazardous constituents of the substances, so that, in the judgment of the department, the substances no longer present any current or currently foreseeable future significant risk to the public health, safety, or welfare, or the environment; no by-product of the treatment or destruction process presents any significant hazard to the public health, safety, or welfare, or the environment; and all by-products are themselves treated, destroyed, or contained in a manner that assures that the by-products do not present any current or currently foreseeable future significant risk to the public health, safety, or welfare, or the environment.

(3) A covenant not to sue concerning future liability to the state shall not take effect until the department

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certifies that remedial action has been completed in accordance with the requirements of this part at the facility that is the subject of the covenant.

(4) In assessing the appropriateness of a covenant not to sue granted under subsection (1) and any condition to be included in a covenant not to sue under subsection (1) or (2), the state shall consider whether the covenant or condition is in the public interest on the basis of factors such as the following:

(a) The effectiveness and reliability of the remedial action, in light of the other alternative remedial actions considered for the facility concerned.

(b) The nature of the risks remaining at the facility.

(c) The extent to which performance standards are included in the consent order.

(d) The extent to which the response activity provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

(e) The extent to which the technology used in the response activity is demonstrated to be effective.

(f) Whether the fund or other sources of funding would be available for any additional response activities that might eventually be necessary at the facility.

(g) Whether response activity will be carried out, in whole or in significant part, by persons who are liable under section 20126.

(5) A covenant not to sue under this section is subject to the satisfactory performance by a person of his or her obligations under the agreement concerned.

(6) Except for the portion of the remedial action that is subject to a covenant not to sue under subsection (2), a covenant not to sue a person concerning future liability to the state shall include an exception to the covenant that allows the state to sue that person concerning future liability resulting from the release or threatened release that is the subject of the covenant if the liability arises out of conditions that are unknown at the time the department certifies under subsection (3) that remedial action has been completed at the facility concerned.

(7) In extraordinary circumstances, the state may determine, after assessment of relevant factors such as those referred to in subsection (4) and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors, not to include the exception in subsection (6) if other terms, conditions, or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that the public health and the environment will be protected from any future releases at or from the facility.

(8) The state may include any provisions providing for future enforcement action under section 20119 or 20137 that in the discretion of the department are necessary and appropriate to assure protection of the public health, safety, welfare, and the environment.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20133 Redevelopment or reuse of facility; covenant not to sue; conditions; demonstration; limitation; reservation of right to assert claims; irrevocable right of entry; monitoring compliance.

Sec. 20133. (1) The state may provide a person who proposes to redevelop or reuse a facility, including a vacant manufacturing or abandoned industrial site, with a covenant not to sue concerning liability under section 20126 and 20107a, if all of the following conditions are met:

(a) The covenant not to sue is in the public interest.

(b) The covenant not to sue will yield new resources to facilitate implementation of response activity.

(c) The covenant not to sue would, when appropriate, expedite response activity consistent with the rules promulgated under this part.

(d) Based upon available information, the department determines that the redevelopment or reuse of the facility is not likely to do any of the following:

(*i*) Exacerbate or contribute to the existing release or threat of release.

(*ii*) Interfere with the implementation of response activities.

(*iii*) Pose health risks related to the release or threat of release to persons who may be present at or in the vicinity of the facility.

(e) The proposal to redevelop or reuse the facility has economic development potential.

(2) A person who requests a covenant not to sue under subsection (1) shall demonstrate to the satisfaction

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of the state all of the following:

(a) That the person is financially capable of redeveloping and reusing the facility in accordance with the covenant not to sue.

(b) That the person is not affiliated in any way with any person who is liable under section 20126 for a release or threat of release at the facility.

(3) A covenant not to sue issued under this section shall address only past releases or threats of release at a facility and shall expressly reserve the right of the state to assert all other claims against the person that proposes to redevelop or reuse the facility, including, but not limited to, those claims arising from any of the following:

(a) The release or threat of release of any hazardous substance resulting from the redevelopment or reuse of the facility to the extent such claims otherwise arise under this part.

(b) Interference with or failure to cooperate with the department, its contractors, or other persons conducting response activities approved by the department.

(c) Failure to comply with section 20107a.

(4) A covenant not to sue issued under this section shall provide for an irrevocable right of entry to the department, its contractors, or other persons performing response activity related to the release or threat of release addressed by the covenant not to sue for the purposes listed in section 20117(3)(a) through (e) and for monitoring compliance with the covenant not to sue.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20134 Consent order; settlement.

Sec. 20134. (1) The department and the attorney general may enter into a consent order with a person who is liable under section 20126 or any group of persons who are liable under section 20126 to perform a response activity if the department and the attorney general determine that the persons who are liable under section 20126 will properly implement the response activity and that the consent order is in the public interest, will expedite effective response activity, and will minimize litigation. The consent order may, as determined appropriate by the department and the attorney general, provide for implementation by a person or any group of persons who are liable under section 20126 of any portion of response activity at the facility. A decision of the attorney general not to enter into a consent order under this part is not subject to judicial review.

(2) Whenever practical and in the public interest, as determined by the department, the department and the attorney general shall as promptly as possible reach a final settlement with a person in an administrative or civil action under this part if this settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the department and the attorney general, the conditions in either of the following are met:

(a) Both of the following are minimal in comparison to other hazardous substances at the facility:

(*i*) The amount of the hazardous substances contributed by that person to the facility.

(*ii*) The toxic or other hazardous effects of the substances contributed by that person to the facility.

(b) Except as provided in subsection (3), the person meets all of the following conditions:

(*i*) The person is the owner of the real property on or in which the facility is located.

(*ii*) The person did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility.

(*iii*) The person did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

(3) A settlement shall not be made under subsection (2)(b) if the person purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of a hazardous substance.

(4) A settlement under subsection (2) may be set aside if information obtained after the settlement indicates that the person settling does not meet the conditions set forth in subsection (2)(a) or (b).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

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Popular name: NREPA

324.20134a Repealed. 1995, Act 71, Imd. Eff. June 5, 1995.

Compiler's note: The repealed section pertained to transfer of exempt status by state or local unit of government.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20135 Civil action; jurisdiction; conditions; notice; awarding costs and fees; rights not impaired; venue.

Sec. 20135. (1) Except as otherwise provided in this part, a person, including a local unit of government on behalf of its citizens, whose health or enjoyment of the environment is or may be adversely affected by a release from a facility or threat of release from a facility, other than a permitted release or a release in compliance with applicable federal, state, and local air pollution control laws, by a violation of this part or a rule promulgated or order issued under this part, or by the failure of the directors to perform a nondiscretionary act or duty under this part, may commence a civil action against any of the following:

(a) An owner or operator who is liable under section 20126 for injunctive relief necessary to prevent irreparable harm to the public health, safety, or welfare, or the environment from a release or threatened release in relation to that facility.

(b) A person who is liable under section 20126 for a violation of this part or a rule promulgated under this part or an order issued under this part in relation to that facility.

(c) One or more of the directors if it is alleged that 1 or more of the directors failed to perform a nondiscretionary act or duty under this part.

(2) The circuit court has jurisdiction in actions brought under subsection (1)(a) to grant injunctive relief necessary to protect the public health, safety, or welfare, or the environment from a release or threatened release. The circuit court has jurisdiction in actions brought under subsection (1)(b) to enforce this part or a rule promulgated or order issued under this part by ordering such action as may be necessary to correct the violation and to impose any civil fine provided for in this part for the violation. A civil fine recovered under this section shall be deposited in the fund. The circuit court has jurisdiction in actions brought under subsection (1)(c) to order 1 or more of the directors to perform the nondiscretionary act or duty concerned.

(3) An action shall not be filed under subsection (1)(a) or (b) unless all of the following conditions exist:

(a) The plaintiff has given at least 60 days' notice in writing of the plaintiff's intent to sue, the basis for the suit, and the relief to be requested to each of the following:

(*i*) The department.

(*ii*) The attorney general.

(*iii*) The proposed defendants.

(b) The state has not commenced and is not diligently prosecuting an action under this part or under other appropriate legal authority to obtain injunctive relief concerning the facility or to require compliance with this part or a rule or an order under this part.

(4) An action shall not be filed under subsection (1)(c) until the plaintiff has given in writing at least 60 days' notice to the directors of the plaintiff's intent to sue, the basis for the suit, and the relief to be requested.

(5) In issuing a final order in an action brought pursuant to this section, the court may award costs of litigation, including reasonable attorney and expert witness fees to the prevailing or substantially prevailing party if the court determines that an award is appropriate.

(6) This section does not affect or otherwise impair the rights of any person under federal, state, or common law.

(7) An action under subsection (1)(a) or (b) shall be brought in the circuit court for the circuit in which the alleged release, threatened release, or other violation occurred. An action under subsection (1)(c) shall be brought in the circuit court for Ingham county.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20135a Access to property; action by court.

Sec. 20135a. (1) A person who is liable under section 20126 or a lender that has a security interest in all or

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a portion of a facility may file a petition in the circuit court of the county in which the facility is located seeking access to the facility in order to conduct response activities approved by the department. If the court grants access to property under this section, the court may do any of the following:

(a) Provide compensation to the property owner or operator for damages related to the granting of access to the property, including compensation for loss of use of the property.

(b) Enjoin interference with the response activities.

(c) Grant any other appropriate relief as determined by the court.

(2) If a court grants access to property under this section, the owner or operator of the property to which access is granted is not liable for either of the following:

(a) A release caused by the response activities for which access is granted unless the owner or operator is otherwise liable under section 20126.

(b) For conditions associated with the response activity that may present a threat to public health or safety.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20136 Repealed. 1995, Act 71, Imd. Eff. June 5, 1995.

Compiler's note: The repealed section pertained to grant programs.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20137 Additional relief; failure of facility owner or operator to report hazardous substance release; civil fine; providing copy of complaint to attorney general; jurisdiction; judicial review; intervenor.

Sec. 20137. (1) Subject to subsections (2) and (3), in addition to other relief authorized by law, the attorney general may, on behalf of the state, commence a civil action seeking 1 or more of the following:

(a) Temporary or permanent injunctive relief necessary to protect the public health, safety, or welfare, or the environment from the release or threat of release.

(b) Recovery of state response activity costs pursuant to section 20126a.

(c) Damages for the full value of injury to, destruction of, or loss of natural resources resulting from the release or threat of release, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release or threat of release.

(d) A declaratory judgment on liability for future response activity costs and damages.

(e) A civil fine of not more than $1,000.00 for each day of noncompliance without sufficient cause with a written request of the department pursuant to section 20114(1)(h). A fine imposed under this subdivision shall be based on the seriousness of the violation and any good faith efforts of the person to comply with the request of the department.

(f) A civil fine of not more than $10,000.00 for each day of violation of this part. A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts of the person to comply with this part.

(g) A civil fine of not more than $25,000.00 for each day of violation of a judicial order or an administrative order issued pursuant to section 20119, including exemplary damages pursuant to section 20119.

(h) Enforcement of an administrative order issued pursuant to section 20119.

(i) Enforcement of information gathering and entry authority pursuant to section 20117.

(j) Enforcement of the reporting requirements under section 20114.

(k) Any other relief necessary for the enforcement of this part.

(2) An owner or operator of a facility from which a hazardous substance is released that is determined to be reportable under section 20114(1)(b)(*i*), other than a permitted release, who fails to notify the department within 24 hours after obtaining knowledge of the release or who submits in such notification any information that the person knows to be false or misleading, is subject to a civil fine of not more than $25,000.00 for each day in which the violation occurs or the failure to comply continues. A fine imposed under this subsection shall be based upon the seriousness of the violation and any good-faith efforts by the violator to comply with

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this subsection.

(3) A person who is responsible for an activity causing a release in excess of the concentrations that satisfy the criteria established pursuant to section 20120a(1)(a) or (b), as appropriate for the use of the property, is subject to a civil fine as provided in this part unless a fine or penalty has already been imposed for the release under another part of this act. However, a civil fine shall not be imposed under this subsection against a person who made a good-faith effort to prevent the release and to comply with the provisions of this part. This subsection does not apply to a release from an underground storage tank system as defined in part 213.

(4) If an action is brought under this part by a plaintiff other than the attorney general, the plaintiff shall, at the time of filing, provide a copy of the complaint to the attorney general.

(5) Except as otherwise provided in this part, an action brought under this part may be brought in the circuit court for the county of Ingham, in the county in which the defendant resides, has a place of business, or in which the registered office of a defendant corporation is located, or in the county where the release occurred.

(6) A state court does not have jurisdiction to review challenges to a response activity selected or approved by the department under this part or to review an administrative order issued under this part in any action except an action that is 1 of the following:

(a) An action to recover response costs, damages, or for contribution.

(b) An action by the state to enforce an administrative order under this part or by any other person under section 20135(1)(b) to enforce an administrative order or to recover a fine for violation of an order.

(c) An action pursuant to section 20119(5) for review of a decision by the department denying or limiting reimbursement.

(d) An action pursuant to section 20135 challenging a response activity selected or approved by the department, if the action is filed after the completion of the response activity.

(e) An action by the state pursuant to section 20126a(6) to compel response activity.

(7) In any judicial action under this part, judicial review of any issues concerning the selection or adequacy of a response activity taken, ordered, or agreed to by the state are limited to the administrative record. If the court finds that the record is incomplete or inadequate, the court may consider supplemental material in the action. In considering objections raised in a judicial action under this part, the court shall uphold the state's decision in selecting a response activity unless the objecting party can demonstrate based on the administrative record that the decision was arbitrary and capricious or otherwise not in accordance with law. In reviewing alleged procedural errors, the court may disallow costs or damages only to the extent the errors were so serious and related to matters of such central importance that the activity would have been significantly changed had the errors not been made.

(8) In an action commenced under this part, any person may intervene as a matter of right if that person claims an interest relating to the subject matter of the action and is situated so that the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest, unless the court finds the person's interest is adequately represented by an existing party.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 230, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20138 Unpaid costs and damages as lien on facility; priority; commencement and sufficiency of lien; petition; notice of hearing; increased value as lien; perfection, duration, and release of lien; document stating completion of response activities.

Sec. 20138. (1) All unpaid costs and damages for which a person is liable under section 20126 constitute a lien in favor of the state upon a facility that has been the subject of response activity by the state and is owned by that person. A lien under this subsection has priority over all other liens and encumbrances except liens and encumbrances recorded before the date the lien under this subsection is recorded. A lien under this subsection arises when the state first incurs costs for response activity at the facility for which the person is responsible.

(2) If the attorney general determines that the lien provided in subsection (1) is insufficient to protect the interest of the state in recovering response costs at a facility, the attorney general may file a petition in the circuit court of the county in which the facility is located seeking either or both of the following:

(a) A lien upon the facility subject to response activity that takes priority over all other liens and

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encumbrances that are or have been recorded on the facility.

(b) A lien upon real or personal property or rights to real or personal property, other than the facility, owned by the person described in subsection (1), having priority over all other liens and encumbrances except liens and encumbrances recorded prior to the date the lien under this subsection is recorded. However, the following are not subject to the lien provided for in this subdivision:

(*i*) Assets of a qualified pension plan or individual retirement account under the internal revenue code.

(*ii*) Assets held expressly for the purpose of financing a dependent's college education.

(*iii*) Up to $500,000.00 in nonbusiness real or personal property or rights to nonbusiness real or personal property, except that not more than $25,000.00 of this amount may be cash or securities.

(3) A petition submitted pursuant to subsection (2) shall set forth with as much specificity as possible the type of lien sought, the property that would be affected, and the reasons the attorney general believes the lien is necessary. Upon receipt of a petition under subsection (2), the court shall promptly schedule a hearing to determine whether the petition should be granted. Notice of the hearing shall be provided to the attorney general, the property owner, and any persons holding liens or perfected security interests in the real property subject to response activity. A lien shall not be granted under subsection (2) against the owner of the facility if the owner is not liable under section 20126.

(4) In addition to the lien provided in subsections (1) and (2), if the state incurs costs for response activity that increases the market value of real property that is the location of a release or threatened release, the increase in value caused by the state funded response activity, to the extent the state incurred unpaid costs and damages, constitutes a lien in favor of the state upon the real property. This lien has priority over all other liens or encumbrances that are or have been recorded upon the property.

(5) A lien provided in subsection (1), (2), or (4) is perfected against real property when a notice of lien is filed by the department with the register of deeds in the county in which the real property is located. A lien upon personal property provided in subsection (2) is perfected when a notice of lien is filed by the department in accordance with applicable law and regulation for the perfection of a lien on that type of personal property. In addition, the department shall, at the time of the filing of the notice of lien, provide a copy of the notice of lien to the owner of that property by certified mail.

(6) A lien under this section continues until the liability for the costs and damages is satisfied or resolved or becomes unenforceable through the operation of the statute of limitations provided in section 20140.

(7) Upon satisfaction of the liability secured by the lien, the department shall file a notice of release of lien in the same manner as provided in subsection (5).

(8) If the department, at the time or prior to the time of filing the notice of release of lien pursuant to subsection (7), has made a determination that the person liable under section 20126 has completed all of the response activity at the real property pursuant to the approved remedial action plan, the department shall execute and file with the notice of release of lien a document stating that all response activities required in the approved remedial action plan have been completed.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20139 Applicability of penalties; conduct constituting felony; penalties; jurisdiction; criminal liability for substantial endangerment to public health, safety, or welfare; determination; knowledge attributable to defendant; award; rules; "serious bodily injury" defined.

Sec. 20139. (1) The penalties provided in this section only apply to a release that occurs after July 1, 1991.

(2) A person who does any of the following is guilty of a felony and shall be fined not less than $2,500.00 or more than $25,000.00 for each violation:

(a) Knowingly releases or causes a release contrary to applicable federal, state, or local requirements or contrary to any permit or license held by that person, if that person knew or should have known that the release could cause personal injury or property damage.

(b) Intentionally makes a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this part.

(c) Intentionally renders inaccurate any monitoring device or record required to be maintained under this part.

(d) Misrepresents his or her qualifications under section 20114d or 20114e.

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(3) In addition to a fine imposed under subsection (2), the court may impose an additional fine of not more than $25,000.00 for each day during which the release occurred. If the conviction is for a violation committed after a first conviction of the person under this subsection, the court shall impose a fine of not less than $25,000.00 and not more than $50,000.00 per day of violation. Upon conviction, in addition to a fine, the court in its discretion may sentence the defendant to imprisonment for not more than 2 years or impose probation upon a person for a violation of this part. With the exception of the issuance of criminal complaints, issuance of warrants, and the holding of an arraignment, the circuit court for the county in which the violation occurred has exclusive jurisdiction.

(4) Upon a finding by the court that the action of a criminal defendant prosecuted under this section poses or posed a substantial endangerment to public health, safety, or welfare, the court shall impose, in addition to the penalties set forth in subsections (2) and (3), a fine of not less than $1,000,000.00 and, in addition to a fine, a sentence of 5 years' imprisonment.

(5) To find a defendant criminally liable for substantial endangerment under subsection (4), the court shall determine that the defendant knowingly or recklessly acted in such a manner as to cause a danger of death or serious bodily injury and that either of the following has occurred:

(a) The defendant had an actual awareness, belief, or understanding that his or her conduct would cause a substantial danger of death or serious bodily injury.

(b) The defendant acted in gross disregard of the standard of care that any reasonable person would observe in similar circumstances.

(6) Knowledge possessed by a person other than the defendant under subsection (5) may be attributable to the defendant if the defendant took affirmative steps to shield himself or herself from the relevant information.

(7) The department may pay an award of up to $10,000.00 to an individual that provides information leading to the arrest and conviction of a person for a violation of this section. The department shall promulgate rules that prescribe criteria for granting awards under this section. An award shall not be made under this section until rules are promulgated prescribing the criteria for making awards. Awards under this subsection may be paid from the Michigan environmental assurance fund, if enabling legislation creating the fund is enacted into law.

(8) As used in this section, "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 230, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20140 Limitation periods; effect of subsection (3).

Sec. 20140. (1) Except as provided in subsections (2) and (3), the limitation period for filing actions under this part is as follows:

(a) For the recovery of response activity costs and natural resources damages pursuant to section 20126a(1)(a), (b), or (c), within 6 years of initiation of physical on-site construction activities for the remedial action selected or approved by the department at a facility, except as provided in subdivision (b).

(b) For 1 or more subsequent actions for recovery of response activity costs pursuant to section 20126, at any time during the response activity, if commenced not later than 3 years after the date of completion of all response activity at the facility.

(c) For civil fines under this part, within 3 years after discovery of the violation for which the civil fines are assessed.

(2) For recovery of natural resources damages that accrued prior to July 1, 1991, the limitation period for filing actions under this part is July 1, 1994.

(3) For recovery of response activity costs that were incurred prior to July 1, 1991, the limitation period for filing actions under this part is July 1, 1994.

(4) Subsection (3) is curative and intended to clarify the original intent of the legislature and applies retroactively.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2000, Act 254, Imd. Eff. June 29, 2000.

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Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20141 Repealed. 1995, Act 71, Imd. Eff. June 5, 1995.

Compiler's note: The repealed section pertained to citizens review board.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20142 Compliance as bar to certain claims; exceptions.

Sec. 20142. (1) Except as provided in section 20126a(5), a person who has complied with the requirements of this part or is exempt from liability under this part is not subject to a claim in law or equity for performance of response activities under part 17, part 31, or common law.

(2) This section does not bar any of the following:

(a) Tort claims unrelated to performance of response activities.

(b) Tort claims for damages which result from response activities.

(c) Tort claims related to the exercise or failure to exercise responsibilities under section 20107a.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

PART 203
VOLUNTEER IMMUNITY

324.20301 Definitions.

Sec. 20301. As used in this part:

(a) “Hazardous material” means a chemical or other material which is or may become injurious to the public health, safety, or welfare, or to the environment.

(b) “Remedial action” means an activity to protect the public health, safety, welfare, or the environment and includes, but is not limited to, cleanup, removal, containment, or isolation of spills.

(c) “Spill” means any leaking, pumping, pouring, emptying, emitting, discharging, escaping, leaching, or disposing of a hazardous material in a quantity which is or may become injurious to the public health, safety, welfare, or to the environment.

(d) “Volunteer” means an individual who is designated as a volunteer by the public entity designated by the governor and is acting solely on behalf of that entity without remuneration beyond reimbursement for out-of-pocket expenses in connection with the assistance.

(e) “Waters of the state” means all groundwaters, lakes, rivers, streams, and other watercourses including the Great Lakes and their connecting waterways within the jurisdiction of the state.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.20302 Hazardous material spills; immunity of volunteers from civil suits; effect of gross negligence or willful misconduct.

Sec. 20302. (1) A volunteer who assists in remedial actions associated with a spill of a hazardous material into the waters of the state following a declaration by the governor pursuant to section 3 of the emergency preparedness act, Act No. 390 of the Public Acts of 1976, being section 30.403 of the Michigan Compiled Laws, that the spill has caused a state of disaster is not liable in a civil action for damages resulting from an act or omission arising out of and in the course of the volunteer's good faith rendering of that assistance.

(2) Subsection (1) does not apply to a volunteer whose act or omission was the result of the volunteer's gross negligence or willful misconduct.

History: 1994, Act 451, Eff. Mar. 30, 1995.

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Popular name: Act 451

Popular name: NREPA

PART 205

324.20501-324.20507 Repealed. 2010, Act 159, Imd. Eff. Sept. 17, 2010.

Compiler's note: The repealed sections pertained to laboratory data quality recognition program.

Popular name: Act 451

Popular name: NREPA

324.20509 Repealed. 2010, Act 159, Eff. Jan. 16, 2011.

Compiler's note: The repealed section pertained to the laboratory data quality program fund.

324.20511-324.20519 Repealed. 2010, Act 159, Imd. Eff. Sept. 17, 2010.

Compiler's note: The repealed sections pertained to laboratory data quality recognition program and the laboratory data quality assurance advisory council.

Popular name: Act 451

Popular name: NREPA

CHAPTER 8

UNDERGROUND STORAGE TANKS

PART 211

UNDERGROUND STORAGE TANK REGULATIONS

****** 324.21101 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21101 Definitions; applicability of certain authority.

Sec. 21101. As used in this part:

(a) “Department” means the department of natural resources, underground storage tank division.

(b) “Fund” means the underground storage tank regulatory enforcement fund created in section 21104.

(c) “Local unit of government” means a municipality, county, or governmental authority or any combination of municipalities, counties, or governmental authorities.

(d) “Natural gas” means natural gas, synthetic gas, and manufactured gas.

(e) “Operator” means a person who is presently, or was at the time of a release, in control of or responsible for the operation of an underground storage tank system.

(f) “Owner” means a person who holds, or at the time of a release who held, a legal, equitable, or possessory interest of any kind in an underground storage tank system or in the property on which an underground storage tank system is located, including, but not limited to, a trust, vendor, vendee, lessor, or lessee. However, owner does not include a person or a regulated financial institution who, without participating in the management of an underground storage tank system and who is not otherwise engaged in petroleum production, refining, or marketing relating to the underground storage tank system, is acting in a fiduciary capacity or who holds indicia of ownership primarily to protect the person's or the regulated financial institution's security interest in the underground storage tank system or the property on which it is located. This exclusion does not apply to a grantor, beneficiary, remainderman, or other person who could directly or indirectly benefit financially from the exclusion other than by the receipt of payment for fees and expenses related to the administration of a trust.

(g) “Regulated substance” means any of the following:

(*i*) A substance defined in section 101(14) of title I of the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 42 U.S.C. 9601, but not including a substance regulated as a hazardous waste under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6921 to 6931 and 6933 to 6939b.

(*ii*) Petroleum, including crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). Petroleum includes but is not limited to mixtures of petroleum with de minimis quantities of other regulated substances, and petroleum-based substances composed of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, or finishing such as motor fuels, jet fuels, distillate

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fuel oils, residual fuel oils, lubricants, and petroleum solvents.

(*iii*) A substance listed in section 112 of part A of title I of the clean air act, chapter 360, 84 Stat. 1685, 42 U.S.C. 7412.

(h) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank system into groundwater, surface water, or subsurface soils.

(i) "Underground storage tank system" means a tank or combination of tanks, including underground pipes connected to the tank or tanks, which is, was, or may have been used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected to the tank or tanks, is 10% or more beneath the surface of the ground. An underground storage tank system does not include any of the following:

(*i*) A farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(*ii*) A tank used for storing heating oil for consumptive use on the premises where the tank is located.

(*iii*) A septic tank.

(*iv*) A pipeline facility, including gathering lines regulated under either of the following:

(A) The natural gas pipeline safety act of 1968, Public Law 90-481, 49 U.S.C. Appx 1671 to 1677, 1679a to 1682, and 1683 to 1687.

(B) Sections 201 to 215 and 217 of the hazardous liquid pipeline safety act of 1979, title II of Public Law 96-129, 49 U.S.C. Appx 2001 to 2015.

(*v*) A surface impoundment, pit, pond, or lagoon.

(*vi*) A storm water or wastewater collection system.

(*vii*) A flow-through process tank.

(*viii*) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(*ix*) A storage tank situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

(*x*) Any pipes connected to a tank that is described in subparagraphs (*i*) to (*xvi*).

(*xi*) An underground storage tank system holding hazardous wastes listed or identified under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6921 to 6931 and 6933 to 6939b, or a mixture of such hazardous waste and other regulated substances.

(*xii*) A wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) of title III or section 402 of title IV of the federal water pollution control act, 33 U.S.C. 1317 and 1342.

(*xiii*) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(*xiv*) An underground storage tank system with a capacity of 110 gallons or less.

(*xv*) An underground storage tank system that contains a de minimis concentration of regulated substances.

(*xvi*) An emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Underground Storage Tank Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21102 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

****** 324.21102 THIS SECTION IS AMENDED EFFECTIVE MARCH 29, 2017: See 324.21102.amended ******

324.21102 Underground storage tank system; registration or renewal of registration; exemption; notification of change; indication of materials stored; tests; forwarding copy of registration or notification of change to local unit of government; registration fee; deposit of fees; rules; exemption; notification of closure or removal; continuation of fees.

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Sec. 21102. (1) A person who is the owner of an underground storage tank system shall register and annually renew the registration on the underground storage tank system with the department. However, the owner or operator of an underground storage tank closed prior to January 1, 1974 in compliance with the fire prevention code, Act No. 207 of the Public Acts of 1941, being sections 29.1 to 29.33 of the Michigan Compiled Laws, and the rules promulgated under that act, is exempt from the registration requirements of this section.

(2) A person who is the owner of an underground storage tank system shall register the underground storage tank system with the department prior to bringing the underground storage tank system into use. Additionally, an installation registration form containing the information required by the department shall be submitted to the department at least 45 days prior to the installation of the underground storage tank system.

(3) The department shall accept the registration or renewal of registration of an underground storage tank system under this section only if the owner of the underground storage tank system pays the registration fee specified in subsection (8).

(4) Except as otherwise provided in subsections (5) and (6), a person who is the owner of an underground storage tank system registered under subsection (1) or (2) shall notify the department of any change in the information required under section 3 or of the removal of an underground storage tank system from service.

(5) A person who is the owner of an underground storage tank system, the contents of which are changed routinely, may indicate all the materials that are stored in the underground storage tank system on the registration form described in section 21103. A person providing the information described in this subsection is not required to notify the department of changes in the contents of the underground storage tank system unless the material to be stored in the system differs from the information provided on the registration form.

(6) Except as otherwise provided in section 21103(2), a person who is the owner of an underground storage tank system registered under subsection (1) or (2) is not required to notify the department of a test conducted on the tank system but shall furnish this information upon the request of the department.

(7) Upon the request of a local unit of government in which an underground storage tank system is located, the department shall forward a copy of registration or notification of change to the local unit of government where the underground storage tank system is located.

(8) Except as provided in section 21104(3), the owner of an underground storage tank system shall, upon registration or renewal of registration, pay a registration fee of $100.00 for each underground storage tank included in that underground storage tank system. The department shall deposit all registration fees it collects into the fund.

(9) The department may promulgate rules that require proof of registration under this part to be attached to the underground storage tank system or to the property where the underground storage tank system is located.

(10) Except as otherwise provided in this subsection, an underground storage tank system or an underground storage tank that is part of the system that has been closed or removed pursuant to rules promulgated under this part is exempt from the requirements of this section. However, the owner of an underground storage tank system or an underground storage tank that is part of the system that has been closed or removed shall notify the department of the closure or removal pursuant to rules promulgated by the department. The owner of an underground storage tank system shall continue to pay registration fees on underground storage tanks that have been closed or removed until notification of the closure or removal is provided on the required form pursuant to these rules.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 29.2101 et seq. of the Michigan Administrative Code.

****** 324.21102 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

****** 324.21102.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 29, 2017 ******

324.21102.amended Underground storage tank system; registration or renewal of registration; notification of change; indication of materials stored; tests; forwarding copy of registration or notification of change to local unit of government; rules; exemption; notification of closure or removal.

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Sec. 21102. (1) A person that is the owner of an underground storage tank system shall register and annually renew the registration on the underground storage tank system with the department. However, the owner or operator of an underground storage tank closed prior to January 1, 1974 in compliance with the fire prevention code, 1941 PA 207, MCL 29.1 to 29.33, and the rules promulgated under that act, is exempt from the registration requirements of this section.

(2) A person that is the owner of an underground storage tank system shall register the underground storage tank system with the department prior to bringing the underground storage tank system into use. Additionally, an installation registration form containing the information required by the department shall be submitted to the department at least 45 days prior to the installation of the underground storage tank system.

(3) Except as otherwise provided in subsections (4) and (5), a person that is the owner of an underground storage tank system registered under subsection (1) or (2) shall notify the department of any change in the information required under section 21103 or of the removal of an underground storage tank system from service.

(4) A person that is the owner of an underground storage tank system, the contents of which are changed routinely, may indicate all the materials that are stored in the underground storage tank system on the registration form described in section 21103. A person providing the information described in this subsection is not required to notify the department of changes in the contents of the underground storage tank system unless the material to be stored in the system differs from the information provided on the registration form.

(5) Except as otherwise provided in section 21103(2), a person that is the owner of an underground storage tank system registered under subsection (1) or (2) is not required to notify the department of a test conducted on the tank system but shall furnish this information upon the request of the department.

(6) Upon the request of a local unit of government in which an underground storage tank system is located, the department shall forward a copy of a registration or notification of change under this section to the local unit of government where the underground storage tank system is located.

(7) The department may promulgate rules that require proof of registration under this part to be attached to the underground storage tank system or to the property where the underground storage tank system is located.

(8) Except as otherwise provided in this subsection, an underground storage tank system or an underground storage tank that is part of the system that has been closed or removed pursuant to rules promulgated under this part is exempt from the requirements of this section. However, the owner of an underground storage tank system or an underground storage tank that is part of the system that has been closed or removed shall notify the department of the closure or removal pursuant to rules promulgated by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2016, Act 465, Eff. Mar. 29, 2017.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 29.2101 et seq. of the Michigan Administrative Code.

****** 324.21103 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21103 Registration forms; suspected or confirmed release from system; notice; supplementary information.

Sec. 21103. (1) The registration required by section 21102(1) and (2) shall be provided either:

(a) On a form provided by the department and in compliance with section 9002 of the solid waste disposal act, 42 U.S.C. 6991a.

(b) On a form approved by the department and in compliance with section 9002 of the solid waste disposal act.

(2) If there is a suspected or confirmed release from an underground storage tank system, the owner or operator of the underground storage tank system shall notify the department within 24 hours and if requested by the department shall file the following supplementary information if known:

(a) The owner of the property where the underground storage tank system is located.

(b) A history of the current and previous contents of the underground storage tank system, including the generic chemical name, chemical abstract service number, or trade name, whichever is most descriptive of the contents, and including the date or dates on which the contents were changed or removed.

(c) A history of the monitoring procedures and leak detection tests and methods employed with respect to

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the underground storage tank system and the resulting findings.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21104 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

****** 324.21104 THIS SECTION IS AMENDED EFFECTIVE MARCH 29, 2017: See 324.21104.amended ******

324.21104 Underground storage tank regulatory enforcement fund; creation; receipts; investment; crediting interest and earnings; reversion to general fund prohibited; use of money; suspension of registration fee; notice of balance in fund.

Sec. 21104. (1) The underground storage tank regulatory enforcement fund is created in the state treasury. The fund may receive money as provided in this part and as otherwise provided by law. The state treasurer shall direct the investment of the fund. Interest and earnings of the fund shall be credited to the fund. Money in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(2) Money in the fund shall be used only by the department to enforce this part and the rules promulgated under this part and the rules promulgated under the fire prevention code, Act No. 207 of the Public Acts of 1941, being sections 29.1 to 29.33 of the Michigan Compiled Laws, pertaining to the delivery and dispensing operations of regulated substances.

(3) Notwithstanding section 21102(8), if at the close of any fiscal year the amount of money in the fund exceeds $8,000,000.00, the department shall not collect a registration fee for the following year from existing underground storage tank systems. After the registration fee has been suspended under this subsection, it shall only be reinstated if, at the close of any succeeding fiscal year, the amount of money in the fund is less than $4,000,000.00.

(4) The department of treasury shall, before November 1 of each year, notify the department of the balance in the fund at the close of the preceding fiscal year.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21104 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

****** 324.21104.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 29, 2017 ******

324.21104.amended Underground storage tank regulatory enforcement fund; creation; receipts; investment; crediting interest and earnings; reversion to general fund prohibited; use of money; notice of balance in fund.

Sec. 21104. (1) The underground storage tank regulatory enforcement fund is created in the state treasury. The fund may receive money as provided in this part and as otherwise provided by law. The state treasurer shall direct the investment of the fund. Interest and earnings of the fund shall be credited to the fund. Money in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(2) Money in the fund shall be used by the department only to enforce this part and the rules promulgated under this part and the rules promulgated under the fire prevention code, 1941 PA 207, MCL 29.1 to 29.33, pertaining to the delivery and dispensing operations of regulated substances.

(3) The department of treasury shall, before November 1 of each year, notify the department of the balance in the fund at the close of the preceding fiscal year.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2016, Act 465, Eff. Mar. 29, 2017.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank

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program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21105 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21105 Collection and evaluation of information; report.

Sec. 21105. The department shall collect and evaluate the information obtained through the registration of underground storage tanks required by section 21102. Not later than September 30, 1987, the department shall provide to the legislature a report containing a compilation of the underground storage tank registration data and an assessment of the actual and potential environmental hazard posed by the tanks.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21106 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21106 Rules.

Sec. 21106. The department shall promulgate rules relating to underground storage tank systems that are at least as stringent as the rules promulgated by the United States environmental protection agency under subtitle I of title II of Public Law 89-272, 42 U.S.C. 6991 to 6991i. These rules shall include a requirement that the owner or operator of an underground storage tank system provide financial responsibility in the event of a release from the underground storage tank system.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 29.2101 et seq. of the Michigan Administrative Code.

****** 324.21107 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21107 Maintaining pollution liability insurance; limits.

Sec. 21107. A person who installs or removes underground storage tank systems shall maintain pollution liability insurance with limits of not less than $1,000,000.00 per occurrence.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21108 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21108 Enforcement of part and rules.

Sec. 21108. (1) The department shall enforce this part and the rules promulgated under this part.

(2) The department may delegate the authority to enforce this part and the rules promulgated under this

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part to a local unit of government that has sufficient employees who are certified by the department under subsection (3) as underground storage tank system inspectors. A local unit of government may apply for delegation under this section by submitting a resolution of the governing body of the local unit of government and an application containing the information required by the department. The department may revoke a delegation under this section for a violation of this part, the rules promulgated under this part, or a contract entered between the department and the local unit of government.

(3) The department may certify individuals who are qualified to enforce this part and the rules promulgated under this part as underground storage tank system inspectors. The department may revoke an individual's certification under this section for violating this part or rules promulgated under this part.

(4) If the department elects to delegate enforcement authority under subsection (2), the department shall promulgate rules that do both of the following:

(a) Establish criteria for delegation under subsection (2).

(b) Establish qualifications for certification of individuals as underground storage tank system inspectors under subsection (3).

(5) The department may contract with a local unit of government for the purpose of enforcing this part and the rules promulgated under this part.

(6) The department or a certified underground storage tank system inspector within his or her jurisdiction, at the discretion of the department or inspector and without a complaint and without restraint or liability for trespass, may, at an hour reasonable under the circumstances involved, enter into and upon real property including a building or premises where regulated substances may be stored for the purpose of inspecting and examining the property, buildings, or premises, and their occupancies and contents to determine compliance with this part and the rules promulgated under this part.

(7) The department shall enhance its audit and inspection program to monitor the installation and operation of new underground storage tank systems or components to ensure that equipment meets minimum quality standards, that the installation is done properly, and that the monitoring systems are properly utilized.

(8) The department shall conduct a study regarding the causes of underground storage tank leaks and prepare a report making recommendations regarding upgrading underground storage tank system standards, establishing timetables for the replacement of equipment, and instituting any other practices or procedures which will minimize releases of regulated substances into the environment. The report shall be submitted by July 1, 1995 to the members of the legislature who are members of committees dealing with natural resource issues.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21109 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21109 Additional safeguards; resolution; enactment or enforcement of certain ordinances prohibited.

Sec. 21109. (1) The department may, upon resolution of the governing body of a local unit of government in whose jurisdiction an underground storage tank system is being installed, require additional safeguards, other than those specified in rules, when the public health, safety, or welfare, or the environment is endangered.

(2) A local unit of government shall not enact or enforce a provision of an ordinance that is inconsistent with this part or rules promulgated under this part.

(3) A local unit of government shall not enact or enforce a provision of an ordinance that requires a permit, license, approval, inspection, or the payment of a fee or tax for the installation, use, closure, or removal of an underground storage tank system.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

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Popular name: NREPA

****** 324.21110 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21110 Prohibited conduct.

Sec. 21110. (1) A person shall not knowingly deliver a regulated substance into an underground storage tank system that is not registered under this part.

(2) A person shall not repair or test an underground storage tank system that is not registered under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21111 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21111 Deferments.

Sec. 21111. The following are deferred from regulation under this part until such time as the department determines that they should be regulated:

(a) Wastewater treatment tank systems.

(b) An underground storage tank system containing radioactive material that is regulated under the atomic energy act of 1954, chapter 1073, 68 Stat. 919.

(c) An underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 C.F.R. part 50, appendix A to part 50 of title 10 of the code of federal regulations.

(d) Airport hydrant fuel distribution systems.

(e) Underground storage tank systems with field-constructed tanks.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21112 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21112 Violation; misdemeanor; penalty; civil fine.

Sec. 21112. (1) A person who violates this part or a rule promulgated under this part or who knowingly submits false information when registering an underground storage tank system under this part is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than $500.00, or both.

(2) A person who violates this part or a rule promulgated under this part or who knowingly submits false information when registering an underground storage tank system under this part is subject to a civil fine of not more than $5,000.00 for each underground storage tank system for each day of violation. A civil fine imposed under this subsection shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with this part and the rules promulgated under this part.

(3) A civil fine collected under subsection (2) shall be deposited into the fund.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

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Popular name: NREPA

****** 324.21113 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21113 Repeal of part.

Sec. 21113. This part is repealed upon the expiration of 12 months after part 215 becomes invalid pursuant to section 21546(3).

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

PART 213
LEAKING UNDERGROUND STORAGE TANKS

324.21301 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to meanings of words and phrases.

Popular name: Act 451

Popular name: NREPA

324.21301a Purpose and applicability of part.

Sec. 21301a. (1) This part is intended to provide remedies using a process and procedures separate and distinct from the process, procedures, and criteria established under part 201 for sites posing a threat to the public health, safety, or welfare, or to the environment, as a result of releases from underground storage tank systems, regardless of whether the release or threat of release of a regulated substance occurred before or after January 19, 1989, the effective date of the former leaking underground storage tank act, 1988 PA 478, and for this purpose, this part shall be given retroactive application. However, criminal penalties provided in this part only apply to violations of this part that occur after April 13, 1995.

(2) The liability provisions that are provided for in this part shall be given retroactive application.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21301b Actions governed by provisions in part; changes in corrective action; corrective actions by nonliable parties.

Sec. 21301b. (1) Notwithstanding any other provision of this part, the following actions shall be governed by the provisions of this part that were in effect on May 1, 1995:

(a) Any judicial action or claim in bankruptcy that was initiated by any person on or before May 1, 1995.

(b) An administrative order that was issued on or before May 1, 1995.

(c) An enforceable agreement with the state entered into on or before May 1, 1995 by any person under this part.

(d) For purposes of this section, the provisions of this part that were in effect on May 1, 1995 are hereby incorporated by reference.

(2) Notwithstanding subsection (1), upon request of a person who has not completed implementing corrective actions under this part, the department shall approve changes in corrective action to be consistent with sections 21304a, 21308a, 21309a, and 21311a.

(3) Notwithstanding any other provision of this part, a person that is not liable under this part may conduct corrective actions under this part in the same manner as a person that is liable under this part. Notwithstanding any other provision of this part, the department shall provide responses to nonliable parties conducting corrective actions for reports submitted under this part in the same manner that it provides responses to persons that are liable under this part.

History: Add. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

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Popular name: NREPA

324.21302 Definitions; A to M.

Sec. 21302. As used in this part:

(a) "Air" means ambient or indoor air at the point of exposure.

(b) "All appropriate inquiry" means an evaluation of environmental conditions at a property at the time of purchase, occupancy, or foreclosure that reasonably defines the existing conditions and circumstances at the property in conformance with 40 CFR 312.

(c) "Baseline environmental assessment" means a written document that describes the results of an all appropriate inquiry and the sampling and analysis that confirm that the property is a site. However, for purposes of a baseline environmental assessment, the all appropriate inquiry under 40 CFR 312.20(a) may be conducted within 45 days after the date of acquisition of a property and the components of an all appropriate inquiry under 40 CFR 312.20(b) and 40 CFR 312.20(c)(3) may be conducted or updated within 45 days after the date of acquisition of a property.

(d) "Biota" means the plant and animal life in an area affected by a corrective action plan.

(e) "Capillary fringe" means the portion of the aquifer above an unconfined saturated zone in which groundwater is drawn upward by capillary force and can include the presence of LNAPL.

(f) "Consultant" means a person that meets the requirements set forth in section 21325.

(g) "Contamination" or "contaminated" means the presence of a regulated substance in soil, surface water, or groundwater or air that has been released from an underground storage tank system at a concentration exceeding the level set forth in the RCBA tier I screening levels established under section 20120a(1)(a) and (b).

(h) "Corrective action" means the investigation, assessment, cleanup, removal, containment, isolation, treatment, or monitoring of regulated substances released into the environment from an underground storage tank system that is necessary under this part to prevent, minimize, or mitigate injury to the public health, safety, or welfare, the environment, or natural resources.

(i) "DNAPL" means a dense nonaqueous-phase liquid with a specific gravity greater than 1 and composed of 1 or more organic compounds that are immiscible or sparingly soluble in water. DNAPL encompasses all potential occurrences of DNAPL.

(j) "Grab sample" means a single sample or measurement taken at a specific time or over as short a period as feasible.

(k) "Groundwater" means water below the land surface in the zone of saturation and capillary fringe.

(*l*) "Groundwater not in an aquifer" means the saturated formation below the land surface that yields groundwater at an insignificant rate considering the local and regional hydrogeology and is not likely in hydraulic communication with groundwater in an aquifer. This includes water trapped or isolated in fill material in an underground storage tank or equivalent basin.

(m) "Heating oil" means petroleum that is no. 1, no. 2, no. 4-light, no. 4-heavy, no. 5-light, no. 5-heavy, and no. 6 technical grades of fuel oil; other residual fuel oils including navy special fuel oil and bunker c; and other fuels when used as substitutes for 1 of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(n) "LNAPL" means a light nonaqueous-phase liquid having a specific gravity less than 1 and composed of 1 or more organic compounds that are immiscible or sparingly soluble in water, and the term encompasses all potential occurrences of LNAPL.

(o) "Local unit of government" means a city, village, township, county, fire department, or local health department as defined in section 1105 of the public health code, 1978 PA 368, MCL 333.1105.

(p) "Low flow sampling" means minimal drawdown groundwater sampling procedures as described in the United States environmental protection agency, office of research and development, office of solid waste and emergency response, EPA/540/S-95/504, December, 1995, EPA groundwater issue.

(q) "Migrating NAPL" means NAPL that is observed to spread or expand laterally or vertically or otherwise result in an increased volume of the NAPL extent, usually indicated by time series data or observation. Migrating NAPL does not include NAPL that appears in a well within the historical extent of the NAPL due to a fluctuating water table.

(r) "Mobile NAPL" means NAPL that exceeds residual saturation, and includes migrating NAPL, but not all mobile NAPL is migrating NAPL.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 2012, Act 111, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

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****** 324.21303 THIS SECTION IS AMENDED EFFECTIVE MARCH 29, 2017: See 324.21303.amended ******

324.21303 Definitions; N to V.

Sec. 21303. As used in this part:

(a) "NAPL" means a nonaqueous-phase liquid or a nonaqueous-phase liquid solution composed of 1 or more organic compounds that are immiscible or sparingly soluble in water. NAPL includes both DNAPL and LNAPL.

(b) "Operator" means a person who is presently, or was at the time of a release, in control of, or responsible for, the operation of an underground storage tank system.

(c) "Owner" means a person who holds, or at the time of a release who held, a legal, equitable, or possessory interest of any kind in an underground storage tank system or in the property on which an underground storage tank system is or was located including, but not limited to, a trust, vendor, vendee, lessor, or lessee.

(d) "Property" means real estate that is contaminated by a release from an underground storage tank system.

(e) "Qualified underground storage tank consultant" means a person who meets the requirements established in section 21325.

(f) "RBCA" means the American society for testing and materials (ASTM) document entitled standard guide for risk-based corrective action applied at petroleum release sites, designation E 1739-95 (reapproved 2010) E1; standard guide for risk-based corrective action designation E 2081-00 (reapproved 2010) E1; and standard guide for development of conceptual site models and remediation strategies for light nonaqueous-phase liquids released to the subsurface designation E 2531-06 E1, all of which are hereby incorporated by reference.

(g) "Regulated substance" means any of the following:

(*i*) A substance defined in section 101(14) of title I of the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 42 USC 9601, but not including a substance regulated as a hazardous waste under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 USC 6921 to 6939e.

(*ii*) Petroleum, including crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). Petroleum includes but is not limited to mixtures of petroleum with de minimis quantities of other regulated substances and petroleum-based substances composed of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, or finishing such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, and petroleum solvents.

(*iii*) A substance listed in section 112 of part A of title I of the clean air act, chapter 360, 84 Stat. 1685, 42 USC 7412.

(h) "Release" means any spilling, leaking, emitting, discharging, escaping, or leaching from an underground storage tank system into groundwater, surface water, or subsurface soils.

(i) "Residual NAPL saturation" means the range of NAPL saturations greater than zero NAPL saturation up to the NAPL saturation at which NAPL capillary pressure equals pore entry pressure and includes the maximum NAPL saturation, below which NAPL is discontinuous and immobile under the applied gradient.

(j) "Risk-based screening level" or "RBSL" means the unrestricted residential and nonresidential generic cleanup criteria developed by the department pursuant to part 201.

(k) "Saturated zone" means a soil area where the soil pores are filled with groundwater and can include the presence of LNAPL.

(*l*) "Site" means a location where a release has occurred or a threat of release exists from an underground storage tank system, excluding any location where corrective action was completed which satisfies the applicable RBSL or SSTL.

(m) "Surface water" means all of the following, but does not include groundwater or an enclosed sewer, other utility line, storm water retention basin, or drainage ditch:

(*i*) The Great Lakes and their connecting waters.

(*ii*) All inland lakes.

(*iii*) Rivers.

(*iv*) Streams.

(*v*) Impoundments.

(n) "Site-specific target level" or "SSTL" means an RBCA risk-based remedial action target level for contamination developed for a site under RBCA tier II and tier III evaluations.

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(o) "Threat of release" or "threatened release" means any circumstance that may reasonably be anticipated to cause a release. Threat of release or threatened release does not include the ownership or operation of an underground storage tank system if the underground storage tank system is operated in accordance with part 211 and rules promulgated under that part.

(p) "Tier I", "tier II", and "tier III" mean those terms as they are used in RBCA.

(q) "Underground storage tank system" means a tank or combination of tanks, including underground pipes connected to the tank or tanks, which is, was, or may have been used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected to the tank or tanks, is 10% or more beneath the surface of the ground. An underground storage tank system does not include any of the following:

(*i*) A farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(*ii*) A tank used for storing heating oil for consumptive use on the premises where the tank is located.

(*iii*) A septic tank.

(*iv*) A pipeline facility, including gathering lines regulated under either of the following:

(A) The natural gas pipeline safety act of 1968, Public Law 90-481, 49 USC Appx 1671 to 1677, 1679a to 1682, and 1683 to 1687.

(B) Sections 201 to 215 and 217 of the hazardous liquid pipeline safety act of 1979, title II of Public Law 96-129, 49 USC Appx 2001 to 2015.

(*v*) A surface impoundment, pit, pond, or lagoon.

(*vi*) A storm water or wastewater collection system.

(*vii*) A flow-through process tank.

(*viii*) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(*ix*) A storage tank situated in an underground area such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

(*x*) Any pipes connected to a tank that is described in subdivisions (*i*) to (*ix*).

(*xi*) An underground storage tank system holding hazardous wastes listed or identified under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 USC 6921 to 6939e, or a mixture of such hazardous waste and other regulated substances.

(*xii*) A wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) of title III or section 402 of title IV of the federal water pollution control act, 33 USC 1317 and 1342.

(*xiii*) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(*xiv*) An underground storage tank system that has a capacity of 110 gallons or less.

(*xv*) An underground storage tank system that contains a de minimis concentration of regulated substances.

(*xvi*) An emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use.

(r) "Vadose zone" means the soil between the land surface and the top of the capillary fringe. Vadose zone is also known as an unsaturated zone or a zone of aeration.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 111, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

***** *324.21303.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 29, 2017* *****

324.21303.amended Definitions; N to V.

Sec. 21303. As used in this part:

(a) "NAPL" means a nonaqueous-phase liquid or a nonaqueous-phase liquid solution composed of 1 or more organic compounds that are immiscible or sparingly soluble in water. NAPL includes both DNAPL and LNAPL.

(b) "Operator" means a person who is presently, or was at the time of a release, in control of, or responsible for, the operation of an underground storage tank system.

(c) "Owner" means a person who holds, or at the time of a release who held, a legal, equitable, or possessory interest of any kind in an underground storage tank system or in the property on which an underground storage tank system is or was located including, but not limited to, a trust, vendor, vendee,

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lessor, or lessee.

(d) "Property" means real estate that is contaminated by a release from an underground storage tank system.

(e) "Public highway" means a road or highway under the jurisdiction of the state transportation department, a county road commission, or a local unit of government.

(f) "Qualified underground storage tank consultant" means a person who meets the requirements established in section 21325.

(g) "RBCA" means the American Society for Testing and Materials (ASTM) document entitled standard guide for risk-based corrective action applied at petroleum release sites, designation E 1739-95 (reapproved 2010) E1; standard guide for risk-based corrective action designation E 2081-00 (reapproved 2010) E1; and standard guide for development of conceptual site models and remediation strategies for light nonaqueous-phase liquids released to the subsurface designation E 2531-06 E1, all of which are hereby incorporated by reference.

(h) "Regulated substance" means any of the following:

(*i*) A substance defined in section 101(14) of title I of the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 42 USC 9601, but not including a substance regulated as a hazardous waste under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 USC 6921 to 6939e.

(*ii*) Petroleum, including crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). Petroleum includes but is not limited to mixtures of petroleum with de minimis quantities of other regulated substances and petroleum-based substances composed of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, or finishing such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, and petroleum solvents.

(*iii*) A substance listed in section 112 of part A of title I of the clean air act, chapter 360, 84 Stat 1685, 42 USC 7412.

(i) "Release" means any spilling, leaking, emitting, discharging, escaping, or leaching from an underground storage tank system into groundwater, surface water, or subsurface soils.

(j) "Residual NAPL saturation" means the range of NAPL saturations greater than zero NAPL saturation up to the NAPL saturation at which NAPL capillary pressure equals pore entry pressure and includes the maximum NAPL saturation, below which NAPL is discontinuous and immobile under the applied gradient.

(k) "Risk-based screening level" or "RBSL" means the unrestricted residential and nonresidential generic cleanup criteria developed by the department pursuant to part 201.

(*l*) "Saturated zone" means a soil area where the soil pores are filled with groundwater and can include the presence of LNAPL.

(m) "Site" means a location where a release has occurred or a threat of release exists from an underground storage tank system, excluding any location where corrective action was completed which satisfies the applicable RBSL or SSTL.

(n) "Surface water" means all of the following, but does not include groundwater or an enclosed sewer, other utility line, storm water retention basin, or drainage ditch:

(*i*) The Great Lakes and their connecting waters.

(*ii*) All inland lakes.

(*iii*) Rivers.

(*iv*) Streams.

(*v*) Impoundments.

(o) "Site-specific target level" or "SSTL" means an RBCA risk-based remedial action target level for contamination developed for a site under RBCA tier II and tier III evaluations.

(p) "Threat of release" or "threatened release" means any circumstance that may reasonably be anticipated to cause a release. Threat of release or threatened release does not include the ownership or operation of an underground storage tank system if the underground storage tank system is operated in accordance with part 211 and rules promulgated under that part.

(q) "Tier I", "tier II", and "tier III" mean those terms as they are used in RBCA.

(r) "Underground storage tank system" means a tank or combination of tanks, including underground pipes connected to the tank or tanks, which is, was, or may have been used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected to the tank or tanks, is 10% or more beneath the surface of the ground. An underground storage tank system does not include any of the following:

(*i*) A farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for

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noncommercial purposes.

(*ii*) A tank used for storing heating oil for consumptive use on the premises where the tank is located.

(*iii*) A septic tank.

(*iv*) A pipeline facility, including gathering lines regulated under either of the following:

(A) The natural gas pipeline safety act of 1968, Public Law 90-481, 49 USC Appx 1671 to 1677, 1679a to 1682, and 1683 to 1687.

(B) Sections 201 to 215 and 217 of the hazardous liquid pipeline safety act of 1979, title II of Public Law 96-129, 49 USC Appx 2001 to 2015.

(*v*) A surface impoundment, pit, pond, or lagoon.

(*vi*) A storm water or wastewater collection system.

(*vii*) A flow-through process tank.

(*viii*) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(*ix*) A storage tank situated in an underground area such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

(*x*) Any pipes connected to a tank that is described in subdivisions (*i*) to (*ix*).

(*xi*) An underground storage tank system holding hazardous wastes listed or identified under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 USC 6921 to 6939e, or a mixture of such hazardous waste and other regulated substances.

(*xii*) A wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) of title III or section 402 of title IV of the federal water pollution control act, 33 USC 1317 and 1342.

(*xiii*) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(*xiv*) An underground storage tank system that has a capacity of 110 gallons or less.

(*xv*) An underground storage tank system that contains a de minimis concentration of regulated substances.

(*xvi*) An emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use.

(s) "Vadose zone" means the soil between the land surface and the top of the capillary fringe. Vadose zone is also known as an unsaturated zone or a zone of aeration.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 111, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2016, Act 381, Eff. Mar. 29, 2017.

Popular name: Act 451

Popular name: NREPA

324.21304 Liability of owner or operator not limited or removed; owner or operator as or employing consultant.

Sec. 21304. (1) Actions taken by a consultant pursuant to this part do not limit or remove the liability of an owner or operator that is liable under section 21323a except as specifically provided for in this part.

(2) Notwithstanding any other provision in this part, if an owner or operator that is liable under section 21323a is a consultant or employs a consultant, this part does not require the owner or operator that is liable under section 21323a to retain an outside consultant to perform the responsibilities required under this part. Those responsibilities may be performed by an owner or operator that is liable under section 21323a who is a consultant or by a consultant employed by the owner or operator that is liable under section 21323a.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21304a Corrective action activities; conduct; manner; use of tier I risk-based screening levels for regulated substances; carcinogenic risk from regulated substance; applicable RBSL or SSTL for groundwater differing from certain standards; corrective action by owner or operator of underground storage tank.

Sec. 21304a. (1) Corrective action activities undertaken pursuant to this part shall be conducted in accordance with the process outlined in RBCA in a manner that is protective of the public health, safety, and welfare, and the environment. Corrective action activities that involve a discharge into air or groundwater as defined in section 21302 or surface water as defined in section 21303 shall be consistent with parts 31 and 55.

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(2) The tier I risk-based screening levels for regulated substances are the unrestricted residential and nonresidential generic cleanup criteria developed by the department pursuant to part 201 and shall be utilized in accordance with the process outlined in RBCA as screening levels only.

(3) If a regulated substance poses a carcinogenic risk to humans, the tier I RBSLs derived for cancer risk shall be the 95% upper bound on the calculated risk of 1 additional cancer above the background cancer rate per 100,000 individuals using the exposure assumptions and pathways established by the process in RBCA. If a regulated substance poses a risk of both cancer and an adverse health effect other than cancer, cleanup criteria shall be derived for cancer and each adverse health effect.

(4) If the applicable RBSL or SSTL for groundwater differs from either (a) the state drinking water standard established pursuant to section 5 of the safe drinking water act, 1976 PA 399, MCL 325.1005, or (b) criteria for adverse aesthetic characteristics derived pursuant to R 299.5709 of the Michigan administrative code, the SSTL shall be the more stringent of (a) or (b) unless the person that undertakes corrective actions under this part determines that compliance with (a) or (b) is not necessary because the use of the groundwater is reliably restricted pursuant to section 21310a.

(5) Corrective action at sites where a release has occurred or a threat of release exists from an underground storage tank system is regulated exclusively under this part. Notwithstanding any other provision of this part, an owner or operator that is liable under section 21323a may choose, in its sole discretion, to fulfill its corrective action obligations pursuant to part 201 in lieu of corrective actions pursuant to this part in either of the following situations:

(a) If a release or threat of release at a site is not solely the result of a release or threat of release from an underground storage tank system, the owner or operator that is liable under section 21323a may choose, in its sole discretion, to perform response activities pursuant to part 201 in lieu of corrective actions pursuant to this part.

(b) If a release from an underground storage tank system involves venting groundwater, the owner or operator that is liable under section 21323a may choose, in its sole discretion, to follow the procedures set forth in section 20120e in performing corrective action under this part related to venting groundwater to address the venting groundwater pursuant to part 201 in lieu of corrective actions addressing the venting groundwater pursuant to this part.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21304b Removal or relocation of soil.

Sec. 21304b. (1) A person shall not remove soil, or allow soil to be removed, from a site to an off-site location unless that person determines that the soil can be lawfully relocated without posing a threat to the public health, safety, or welfare, or the environment. The determination shall consider whether the soil is subject to regulation under parts 111 and 115.

(2) For the purposes of subsection (1), soil poses a threat to the public health, safety, or welfare, or the environment if concentrations of regulated substances in the soil exceed the tier I RBSLs established pursuant to section 21304a that apply to the location to which the soil will be moved or relocated, except if the soil is to be removed from the site for disposal or treatment, the soil shall satisfy the appropriate regulatory criteria for disposal or treatment. Any land use restriction that would be required for the application of a criterion pursuant to section 21304a shall be in place at the location to which the soil will be moved. Soil may be relocated only to another location that is similarly contaminated, considering the general nature, concentration, and mobility of regulated substances present at the location to which the contaminated soil will be removed. Contaminated soil shall not be moved to a location that is not a site unless it is taken there for treatment or disposal in conformance with applicable laws and regulations.

(3) A person shall not relocate soil, or allow soil to be relocated, within a site of environmental contamination where a corrective action plan was approved unless that person provides assurances that the same degree of control required for application of the criteria of section 21304a is provided for the contaminated soil.

(4) The prohibition in subsection (3) against relocation of contaminated soil within a site of environmental contamination does not apply to soils that are temporarily relocated for the purpose of implementing corrective actions or utility construction if the corrective actions or utility construction is completed in a timely fashion and the short-term hazards are appropriately controlled.

(5) If soil is being relocated in a manner not addressed by this section, the person that owns or operates the site from which soil is being moved shall notify the department within 14 days after the soil is moved. The

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notice shall include all of the following:

(a) The location from which soil will be removed.

(b) The location to which the soil will be taken.

(c) The volume of soil to be removed.

(d) A summary of information or data on which the person is basing the determination required in subsection (2) that the soil does not present a threat to the public health, safety, or welfare, or the environment.

(e) If land use restrictions would apply pursuant to section 21310a, to the soil when it is relocated, the notice shall include documentation that those restrictions are in place.

(6) The determination required by subsections (1) and (3) shall be based on knowledge of the person undertaking or approving the removal or relocation of soil, or on characterization of the soil for the purpose of compliance with this section.

(7) This section does not apply to soil that is designated as an inert material pursuant to section 11507.

History: Add. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

****** 324.21304c THIS SECTION IS AMENDED EFFECTIVE MARCH 29, 2017: See 324.21304c.amended ******

324.21304c Duty of owner or operator of property; basis; liability for corrective action activity costs and natural resource damages; applicability of subsection (1)(a) to (c) to state or local unit of government.

Sec. 21304c. (1) A person that owns or operates property that the person has knowledge is contaminated shall do all of the following with respect to regulated substances at the property:

(a) Undertake measures as are necessary to prevent exacerbation.

(b) Exercise due care by undertaking corrective action necessary to mitigate unacceptable exposure to regulated substances, mitigate fire and explosion hazards due to regulated substances, and allow for the intended use of the property in a manner that protects the public health and safety.

(c) Take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that foreseeably could result from those acts or omissions.

(d) Provide reasonable cooperation, assistance, and access to the persons that are authorized to conduct corrective action activities at the property, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial corrective action activity at the property. Nothing in this subdivision shall be interpreted to provide any right of access not expressly authorized by law, including access authorized pursuant to a warrant or a court order, or to preclude access allowed pursuant to a voluntary agreement.

(e) Comply with any land use or resources use restrictions established or relied on in connection with the corrective action activities at the property.

(f) Not impede the effectiveness or integrity of any land use or resource use restriction employed at the property in connection with corrective action activities.

(2) A person's obligations under this section shall be based upon the applicable RBSL or SSTL.

(3) A person that violates subsection (1) that is not otherwise liable under this part for the release at the property is liable for corrective action activity costs and natural resource damages attributable to any exacerbation and any fines or penalties imposed under this part resulting from the violation of subsection (1) but is not liable for performance of additional corrective action activities unless the person is otherwise liable under this part for performance of additional corrective action activities. The burden of proof in a dispute as to what constitutes exacerbation shall be borne by the party seeking relief.

(4) Compliance with this section does not satisfy a person's obligation to perform corrective action activities as otherwise required under this part.

(5) Subsection (1)(a) to (c) does not apply to the state or to a local unit of government that is not liable under section 21323a(3)(a), (b), (c), or (e) or to the state or local unit of government that acquired property by purchase, gift, transfer, or condemnation or to a person that is exempt from liability under section 21323a(4)(b). However, if the state or local unit of government, other than those exempt from liability under section 21323a(4)(b), acting as the operator of a parcel of property that the state or local unit of government has knowledge is contaminated by a release from an underground storage tank system, offers access to that parcel on a regular or continuous basis pursuant to an express public purpose and invites the general public to

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use that property for the express public purpose, the state or local unit of government is subject to this section but only with respect to that portion of the property that is opened to and used by the general public for that express purpose, and not the entire property. Express public purpose includes, but is not limited to, activities such as a public park, municipal office building, or municipal public works operation. Express public purpose does not include activities surrounding the acquisition or compilation of parcels for the purpose of future development.

(6) Subsection (1)(a) to (c) does not apply to a person that is exempt from liability under section 21323a(3)(c) or (d) except with regard to that person's activities at the property.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

****** 324.21304c.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 29, 2017 ******

324.21304c.amended Duty of owner or operator of property; basis; liability for corrective action activity costs and natural resource damages; applicability of subsection (1)(a) to (f).

Sec. 21304c. (1) A person that owns or operates property that the person has knowledge is contaminated shall do all of the following with respect to regulated substances at the property:

(a) Undertake measures as are necessary to prevent exacerbation.

(b) Exercise due care by undertaking corrective action necessary to mitigate unacceptable exposure to regulated substances, mitigate fire and explosion hazards due to regulated substances, and allow for the intended use of the property in a manner that protects the public health and safety.

(c) Take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that foreseeably could result from those acts or omissions.

(d) Provide reasonable cooperation, assistance, and access to the persons that are authorized to conduct corrective action activities at the property, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial corrective action activity at the property. Nothing in this subdivision shall be interpreted to provide any right of access not expressly authorized by law, including access authorized pursuant to a warrant or a court order, or to preclude access allowed pursuant to a voluntary agreement.

(e) Comply with any land use or resources use restrictions established or relied on in connection with the corrective action activities at the property.

(f) Not impede the effectiveness or integrity of any corrective action or land use or resource use restriction employed at the property in connection with corrective action activities.

(2) A person's obligations under this section shall be based upon the applicable RBSL or SSTL.

(3) A person that violates subsection (1) that is not otherwise liable under this part for the release at the property is liable for corrective action activity costs and natural resource damages attributable to any exacerbation and any fines or penalties imposed under this part resulting from the violation of subsection (1) but is not liable for performance of additional corrective action activities unless the person is otherwise liable under this part for performance of additional corrective action activities. The burden of proof in a dispute as to what constitutes exacerbation shall be borne by the party seeking relief.

(4) Compliance with this section does not satisfy a person's obligation to perform corrective action activities as otherwise required under this part.

(5) Subsection (1)(a) to (c) and (f) does not apply to this state, a county road commission, or a local unit of government if it is not liable under section 21323a(3)(a), (b), (c), or (e) or to this state, a county road commission, or a local unit of government if it acquired property by purchase, gift, transfer, or condemnation or to a person that is exempt from liability under section 21323a(4)(b). However, if this state or a local unit of government, unless exempt from liability under section 21323a(4)(b), acting as the owner or operator of property offers access to the property on a regular or continuous basis for a public purpose and invites the public to use the property for the public purpose, this state or the local unit of government is subject to this section but only with respect to that portion of the property that is opened to and used by the public for the public purpose, and not the entire property. Public purpose includes, but is not limited to, activities such as a park, office building, or public works operation. Public purpose does not include a public highway or activities surrounding the acquisition or compilation of parcels for the purpose of future development.

(6) Subsection (1)(a) to (c) does not apply to a person that is exempt from liability under section 21323a(3)(c) or (d) except with regard to that person's activities at the property.

(7) Subsection (1)(a) to (f) applies to an owner or operator who is liable under section 21323a with respect to regulated substances present within a public highway above applicable RBSLs or SSTLs.

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History: Add. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2016, Act 381, Eff. Mar. 29, 2017.

Popular name: Act 451

Popular name: NREPA

324.21304d Transfer of interest in real property in which notice required; certification of completed corrective action activity; disclosure.

Sec. 21304d. (1) If a person owns a parcel of real property and has knowledge or information or is on notice through a recorded instrument that the real property is a site, the person shall not transfer an interest in that real property unless the person provides written notice to the transferee that the real property is a site and of the general nature and extent of the release.

(2) A person that owns real property for which a notice required in subsection (1) has been recorded may, upon completion of all corrective action activities for the site as approved by the department, record with the register of deeds for the appropriate county a certification that all corrective action activity required in an approved final assessment report has been completed.

(3) A person shall not transfer an interest in real property unless the person fully discloses any land or resource use restrictions that apply to that real property as a part of corrective action that has been or is being implemented in compliance with section 21304a.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21305 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to promulgation of administrative rules.

Popular name: Act 451

Popular name: NREPA

324.21306 Repealed. 1996, Act 116, Imd. Eff. Mar. 6, 1996.

Compiler's note: The repealed section pertained to de minimis spills, removal or disposal of contaminated soils, duties of consultants, and eligibility to receive funding.

Popular name: Act 451

Popular name: NREPA

324.21307 Report of release; initial response actions; duties of owner or operator liable under MCL 324.21323a.

Sec. 21307. (1) Upon confirmation of a release from an underground storage tank system, the owner or operator that is liable under section 21323a shall report the release to the department within 24 hours after discovery. The department may investigate the release. However, an investigation by the department does not relieve the owner or operator that is liable under section 21323a from any responsibilities related to the release provided for in this part.

(2) After a release has been reported under subsection (1), the owner or operator that is liable under section 21323a shall immediately begin and expeditiously perform all of the following initial actions:

(a) Identify and mitigate immediate fire, explosion hazards, and acute vapor hazards.

(b) Take action to prevent further release of the regulated substance into the environment including removing the regulated substance from the underground storage tank system that is causing the release.

(c) Using the process outlined by RBCA regarding NAPL, take steps necessary and feasible under this part to address unacceptable immediate risks.

(d) Excavate and contain, treat, or dispose of soils above the water table that are visibly contaminated with a regulated substance if the contamination is likely to cause a fire hazard.

(e) Take any other action necessary to abate an immediate threat to public health, safety, or welfare, or the environment.

(3) Immediately following initiation of initial response actions under this section, the owner or operator that is liable under section 21323a shall do all of the following:

(a) Visually inspect the areas of any aboveground releases or exposed areas of belowground releases and prevent further migration of the released substance into surrounding soils, groundwater, and surface water.

(b) Continue to monitor and mitigate any additional immediate fire and safety hazards posed by vapors or NAPL that have migrated from the underground storage tank system excavation zone and entered into subsurface structures.

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History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21307a Site closure report; activities requiring notification by owner or operator to department.

Sec. 21307a. (1) Following initiation of initial actions under section 21307, the owner or operator that is liable under section 21323a shall complete the requirements of this part and submit related reports or executive summaries detailed in this part to address the contamination at the site. At any time that sufficient corrective action has been undertaken to address contamination, the owner or operator that is liable under section 21323a shall complete and submit a site closure report pursuant to section 21312a and omit the remaining interim steps.

(2) In addition to the reporting requirements specified in this part, the owner or operator that is liable under section 21323a shall provide 48-hour notification to the department prior to initiating any of the following activities:

(a) Soil excavation.

(b) Well drilling, including monitoring well installation.

(c) Sampling of soil or groundwater.

(d) Construction of treatment systems.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21308 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to initial assessment of release.

Popular name: Act 451

Popular name: NREPA

324.21308a Initial assessment report; discovery of migrating or mobile NAPL; additional information; supporting documentation upon request.

Sec. 21308a. (1) Within 180 days after a release has been discovered, the owner or operator that is liable under section 21323a shall complete an initial assessment report and submit the report to the department on a form created pursuant to section 21316. The report shall include the following information:

(a) Results of initial actions taken under section 21307(2).

(b) Site information and site characterization results. The following items shall be included as appropriate given the site conditions:

(*i*) The property address.

(*ii*) The name of the business, if applicable.

(*iii*) The name, address, and telephone number of a contact person for the owner or operator that is liable under section 21323a.

(*iv*) The time and date of release discovery.

(*v*) The time and date the release was reported to the department.

(*vi*) A site map that includes all of the following:

(A) The location of each underground storage tank in the leaking underground storage tank system.

(B) The location of any other known current or former underground storage tank system on the site.

(C) The location of fill ports, dispensers, and other pertinent system components for known current or former underground storage tank systems on the site.

(D) Soil and groundwater sample locations, if applicable.

(E) The locations of nearby buildings, roadways, paved areas, or other structures.

(*vii*) A description of how the release was discovered.

(*viii*) A list of regulated substances the underground storage tank system contained when the release occurred.

(*ix*) A list of the regulated substances the underground storage tank system contained in the past other than those listed in subparagraph (*viii*).

(*x*) The location of nearby surface waters and wetlands.

(*xi*) The location of nearby underground sewers and utility lines.

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(*xii*) The component of the underground storage tank system from which the release occurred (e.g., piping, underground storage tank, overfill).

(*xiii*) Whether the underground storage tank system was emptied to prevent further release.

(*xiv*) A description of what other steps were taken to prevent further migration of the regulated substance into the soil or groundwater.

(*xv*) Whether toxic or explosive vapors or migrating or mobile NAPL was found and what steps were taken to evaluate those conditions and the current levels of toxic or explosive vapors or migrating or mobile NAPL in nearby structures.

(*xvi*) The extent to which all or part of the underground storage tank system or soil, or both, was removed.

(*xvii*) Data from analytical testing of soil and groundwater samples.

(*xviii*) A description of the mobile or migrating NAPL investigation and evaluation conducted pursuant to section 21307(2)(c) and, if the evaluation of NAPL concludes that NAPL is recoverable and removal is necessary under this part to abate an unacceptable risk pursuant to the provisions outlined in RBCA, a description of the removal, including all of the following:

(A) A description of the actions taken to remove any NAPL.

(B) The name of the person or persons responsible for implementing the NAPL removal measures.

(C) The estimated quantity, type, and thickness of NAPL observed or measured in wells, boreholes, and excavations.

(D) The type of NAPL recovery system used.

(E) Whether any discharge will take place on site or off site during the recovery operation and where this discharge will be located.

(F) The type of treatment applied to, and the effluent quality expected from, any discharge.

(G) The steps that have been or are being taken to obtain necessary permits for any discharge.

(H) The quantity and disposition of the recovered NAPL.

(*xix*) Identification of any other contamination on the site not resulting from the release and the source, if known.

(*xx*) An estimate of the horizontal and vertical extent of on-site and off-site soil contamination exceeding the applicable RBSL for tier I sites or the applicable SSTL for tier II or tier III sites.

(*xxi*) The depth to groundwater.

(*xxii*) An identification of potential migration and exposure pathways and receptors.

(*xxiii*) An estimate of the amount of soil in the vadose zone that is contaminated.

(*xxiv*) If the on-site assessment indicates that off-site soil or groundwater may be affected, report the steps that have been taken or will be taken including an implementation schedule to expeditiously secure access to off-site properties to complete the delineation of the extent of the release if the contamination exceeds the applicable RBSL or the applicable SSTL.

(*xxv*) Groundwater flow rate and direction.

(*xxvi*) Laboratory analytical data collected. The owner or operator may elect to obtain groundwater samples utilizing a grab sample technique for initial assessment and monitoring purposes that do not represent initial delineation of the limit of contamination or closure verification sampling.

(*xxvii*) The vertical distribution of contaminants that exceed the applicable RBSL or applicable SSTL.

(c) Site classification under section 21314a.

(d) Tier I or tier II evaluation according to the RBCA process.

(e) A work plan, including an implementation schedule for conducting a final assessment report under section 21311a, to determine the vertical and horizontal extent of the contamination that exceeds the applicable RBSL or applicable SSTL as necessary for preparation of the corrective action plan.

(2) If migrating or mobile NAPL is discovered at a site after the submittal of an initial assessment report pursuant to subsection (1), the owner or operator that is liable under section 21323a shall do both of the following:

(a) Perform initial actions identified in section 21307(2)(c).

(b) Submit to the department an amendment to the initial assessment report within 30 days of discovery of the migrating or mobile NAPL that describes response actions taken as a result of the migrating or mobile NAPL discovery.

(3) The department shall not require any additional information beyond that required under this section to be included in an initial assessment report. The owner or operator that is liable under section 21323a shall provide supporting documentation to the data and conclusions of the initial assessment report upon request by the department.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 110, Imd. Eff.

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May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21309 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to conditions requiring report of corrective action and proposed schedule and removal and disposal of contaminated soil.

Popular name: Act 451

Popular name: NREPA

324.21309a Corrective action plan.

Sec. 21309a. (1) If initial actions under section 21307 have not resulted in completion of corrective action, an owner or operator that is liable under section 21323a shall prepare a corrective action plan to address contamination at the site. Corrective action plans submitted as part of a final assessment report shall use the process described in RBCA and shall be based upon the site information and characterization results of the initial assessment report.

(2) A corrective action plan shall include all of the following:

(a) A description of the corrective action to be implemented, including an explanation of how that action will meet the requirements of the tier I, II, or III evaluation in the RBCA process. The corrective action plan shall also include an analysis of the selection of indicator parameters to be used in evaluating the implementation of the corrective action plan, if indicator parameters are to be used. The corrective action plan shall include an analysis of the recoverability of the NAPL and whether the NAPL is mobile or migrating, and a description of ambient air quality monitoring activities to be undertaken during the corrective action if such activities are appropriate.

(b) An operation and maintenance plan if any element of the corrective action requires operation and maintenance. The operation and maintenance plan shall include information that describes the proposed operation and maintenance actions.

(c) A monitoring plan if monitoring of environmental media or site activities or both is required to confirm the effectiveness and integrity of the remedy. The monitoring plan shall include all of the following:

(*i*) Location of monitoring points.

(*ii*) Environmental media to be monitored, including, but not limited to, soil, air, water, or biota.

(*iii*) Monitoring schedule.

(*iv*) Monitoring methodology, including sample collection procedures such as grab sampling procedures for monitoring groundwater, among other procedures.

(*v*) Substances to be monitored, including an explanation of the selection of any indicator parameters to be used.

(*vi*) Laboratory methodology, including the name of the laboratory responsible for analysis of monitoring samples, method detection limits, and practical quantitation levels. Raw data used to determine method detection limits shall be made available to the department on request.

(*vii*) Quality control/quality assurance plan.

(*viii*) Data presentation and evaluation plan.

(*ix*) How the monitoring data will be used to demonstrate effectiveness of corrective action activities.

(*x*) Other elements required by the department to determine the adequacy of the monitoring plan. Department requests for information pursuant to this subparagraph shall be limited to factors not adequately addressed by information required under subparagraphs (*i*) through (*ix*) and shall be accompanied by an explanation of the need for the additional information.

(d) An explanation of any land use or resource use restrictions, if the restrictions are required pursuant to section 21310a, including how those restrictions will be effective in preventing or controlling unacceptable exposures.

(e) A schedule for implementation of the corrective action.

(f) If the corrective action plan includes the operation of a mechanical soil or groundwater remediation system, or both, a financial assurance mechanism to pay for monitoring, operation, and maintenance necessary to assure the effectiveness and integrity of the corrective action remediation system.

(g) If provisions for operation and maintenance, monitoring, or financial assurance are included in the corrective action plan, and those provisions are not complied with, the corrective action plan is void from the time of lapse or violation until the lapse or violation is corrected.

(3) If a corrective action plan prepared under this section does not result in an unrestricted use of the property, the owner or operator that is liable under section 21323a shall provide notice to the public by means

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designed to reach those members of the public directly impacted by the release above a residential RBSL and the proposed corrective action. The notice shall include the name, address, and telephone number of a contact person. A copy of the notice and proof of providing the notice shall be submitted to the department. The department shall ensure that site release information and corrective action plans that do not result in an unrestricted use of property are made available to the public for inspection upon request.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21310 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to conditions requiring soil feasibility analysis and soil remedial corrective action plan.

Popular name: Act 451

Popular name: NREPA

****** 324.21310a THIS SECTION IS AMENDED EFFECTIVE MARCH 29, 2017: See 324.21310a.amended* *****

324.21310a Notice of corrective action; institutional controls; restrictive covenants; alternative mechanisms; notice of land use restrictions.

Sec. 21310a. (1) If the corrective action activities at a site result in a final remedy that relies on a nonresidential RBSL or an SSTL, institutional controls shall be implemented as provided in this subsection. A notice of corrective action shall be recorded with the register of deeds for the county in which the site is located prior to submittal of a closure report under section 21312a. A notice shall be filed under this subsection only by the person that owns the property or with the express written permission of the person that owns the property. A notice of corrective action recorded under this subsection shall state the land use that was the basis of the corrective action. The notice shall state that if there is a proposed change in the land use at any time in the future, that change may necessitate further evaluation of potential risks to the public health, safety, and welfare and to the environment and that the department shall be contacted regarding any proposed change in the land use. Additional requirements for monitoring or operation and maintenance shall not apply if contamination levels do not exceed the levels established in the tier I evaluation.

(2) If corrective action activities at a site rely on institutional controls other than as provided in subsection (1), the institutional controls shall be implemented as provided in this subsection. The restrictive covenant shall be recorded with the register of deeds for the county in which the property is located within 30 days from submittal of the final assessment report pursuant to section 21311a, unless otherwise agreed to by the department. The restrictive covenant shall be filed only by the person that owns the property or with the express written permission of the person that owns the property. The restrictions shall run with the land and be binding on the owner's successors, assigns, and lessees. The restrictions shall apply until regulated substances no longer present an unacceptable risk to the public health, safety, or welfare or to the environment. The restrictive covenant shall include a survey and property description which define the areas addressed by the corrective action plan and the scope of any land use or resource use limitations. The form and content of the restrictive covenant shall include provisions to accomplish all of the following:

(a) Restrict activities at the site that may interfere with corrective action, operation and maintenance, monitoring, or other measures necessary to assure the effectiveness and integrity of the corrective action.

(b) Restrict activities that may result in exposure to regulated substances above levels established in the corrective action plan.

(c) Prevent a conveyance of title, an easement, or other interest in the property from being consummated by the person that owns the property without adequate and complete provision for compliance with the corrective action plan and prevention of exposure to regulated substances described in subdivision (b).

(d) Grant to the department and its designated representatives the right to enter the property at reasonable times for the purpose of determining and monitoring compliance with the corrective action plan, including but not limited to the right to take samples, inspect the operation of the corrective action measures, and inspect records.

(e) Allow the state to enforce restrictions set forth in the covenant by legal action in a court of appropriate jurisdiction.

(f) Describe generally the uses of the property that are consistent with the corrective action plan.

(3) If the owner or operator that is liable under section 21323a determines that exposure to regulated

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substances may be reliably restricted by a means other than a restrictive covenant and that imposition of land use or resource use restrictions through restrictive covenants is impractical, the owner or operator that is liable under section 21323a may select a corrective action plan that relies on alternative mechanisms. Mechanisms that may be considered under this subsection include, but are not limited to, an ordinance that prohibits the use of groundwater in a manner and to a degree that protects against unacceptable exposure to a regulated substance as defined by the RBSLs or SSTLs identified in the corrective action plan. An ordinance that serves as an exposure control under this subsection shall include both of the following:

(a) A requirement that the local unit of government notify the department 30 days before adopting a modification to the ordinance or the lapsing or revocation of the ordinance.

(b) A requirement that the ordinance be filed with the register of deeds as an ordinance affecting multiple properties.

(4) Notwithstanding subsections (1), (2), and (3), if a mechanism other than a notice of corrective action, an ordinance, or a restrictive covenant is requested by an owner or operator that is liable under section 21323a and the department determines that the alternative mechanism is appropriate, the department may approve of the alternate mechanism.

(5) A person that implements corrective action activities that relies on land use restrictions shall provide notice of the land use restrictions that are part of the corrective action plan to the local unit of government in which the site is located within 30 days of filing of the land use restrictions with the county register of deeds.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

****** 324.21310a.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 29, 2017 ******

324.21310a.amended Notice of corrective action; institutional controls; restrictive covenants; alternative mechanisms; notice of land use restrictions.

Sec. 21310a. (1) If the corrective action activities at a site result in a final remedy that relies on a nonresidential RBSL or an SSTL, institutional controls shall be implemented as provided in this subsection. A notice of corrective action shall be recorded with the register of deeds for the county in which the site is located prior to submittal of a closure report under section 21312a. A notice shall be filed under this subsection only by the person that owns the property or with the express written permission of the person that owns the property. A notice of corrective action recorded under this subsection shall state the land use that was the basis of the corrective action. The notice shall state that if there is a proposed change in the land use at any time in the future, that change may necessitate further evaluation of potential risks to the public health, safety, and welfare and to the environment and that the department shall be contacted regarding any proposed change in the land use. Additional requirements for monitoring or operation and maintenance shall not apply if contamination levels do not exceed the levels established in the tier I evaluation.

(2) If corrective action activities at a site rely on institutional controls other than as provided in subsection (1), the institutional controls shall be implemented as provided in this subsection. The restrictive covenant shall be recorded with the register of deeds for the county in which the property is located within 30 days from submittal of the final assessment report pursuant to section 21311a, unless otherwise agreed to by the department. The restrictive covenant shall be filed only by the person that owns the property or with the express written permission of the person that owns the property. The restrictions shall run with the land and be binding on the owner's successors, assigns, and lessees. The restrictions shall apply until regulated substances no longer present an unacceptable risk to the public health, safety, or welfare or to the environment. The restrictive covenant shall include a survey and property description which define the areas addressed by the corrective action plan and the scope of any land use or resource use limitations. The form and content of the restrictive covenant shall include provisions to accomplish all of the following:

(a) Restrict activities at the site that may interfere with corrective action, operation and maintenance, monitoring, or other measures necessary to assure the effectiveness and integrity of the corrective action.

(b) Restrict activities that may result in exposure to regulated substances above levels established in the corrective action plan.

(c) Prevent a conveyance of title, an easement, or other interest in the property from being consummated by the person that owns the property without adequate and complete provision for compliance with the corrective action plan and prevention of exposure to regulated substances described in subdivision (b).

(d) Grant to the department and its designated representatives the right to enter the property at reasonable times for the purpose of determining and monitoring compliance with the corrective action plan, including,

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but not limited to, the right to take samples, inspect the operation of the corrective action measures, and inspect records.

(e) Allow this state to enforce restrictions set forth in the covenant by legal action in a court of appropriate jurisdiction.

(f) Describe generally the uses of the property that are consistent with the corrective action plan.

(3) If the owner or operator that is liable under section 21323a determines that exposure to regulated substances may be restricted by a means other than a restrictive covenant in a manner that protects against exposure to regulated substances as defined by the RBSLs and SSTLs, the owner or operator that is liable under section 21323a may select a corrective action plan that relies on alternative mechanisms. Mechanisms that may be considered under this subsection include, but are not limited to, any of the following:

(a) Compliance with an ordinance, state law, or rule that limits or prohibits the use of contaminated groundwater above the RBSLs or SSTLs identified in the corrective action plan, prohibits the raising of livestock, prohibits development in certain locations, or restricts property to certain uses. An ordinance under this subdivision shall be filed with the register of deeds on the affected property or shall be filed as an ordinance affecting multiple properties. An ordinance adopted after the effective date of the 2016 amendatory act that amended this section shall include a requirement that the local unit of government notify the department 30 days before adopting a modification to the ordinance or the lapsing or revocation of the ordinance.

(b) A license or license agreement with the state transportation department if regulated substances are proposed to be left in place within a public highway owned or controlled by the state transportation department. The license or license agreement may include a financial mechanism in an amount calculated to reflect the reasonably estimated increased cost of any activity anticipated to be performed as described in the most recently adopted state 5-year program, that has the potential to disturb or expose the environmental contamination left in place within the public highway, including, but not limited to, 1 of the following:

(*i*) A bond executed by a surety authorized to do business in this state.

(*ii*) Insurance coverage, as evidenced by a proof of insurance.

(*iii*) Eligibility under the underground storage tank cleanup fund created in section 21506b.

(*iv*) A letter of credit.

(*v*) A corporate guarantee.

(*vi*) Self-insurance meeting a financial test approved by the state transportation department.

(c) If the state transportation department fails or refuses to grant a license or enter into a license agreement within 120 days after submission of a request to issue a license or enter into a license agreement, and for public highways owned or controlled by a county road commission or a local unit of government, reliance on the existence of a public highway, if the owner or operator that is liable under section 21323a does all of the following:

(*i*) Provides the department and the person that owns or operates the public highway with the following information related to the release and site:

(A) The site name, address, and facility identification number, and the name and contact information of the person relying on the alternative mechanism.

(B) Identification of the department district office with jurisdiction over the site.

(C) The name of the affected public highway and the nearest intersection.

(D) Identification of known or suspected contaminants.

(E) A statement that residual or mobile NAPL is or is not present at the affected public highway.

(F) The media affected, including depth of contaminated soil, depth of groundwater, and predominate groundwater flow direction.

(G) A scale drawing of the portion of the public highway subject to the alternate mechanism that depicts the area impacted by regulated substances and the location of utilities in the impacted area, including storm water systems and municipal separate storm water systems.

(H) Identification of all ownership and possessory or use property interests related to the public highway and whether they are affected by the contamination and whether they have received notification of the existing conditions as part of a corrective action plan or pursuant to the due care requirements under section 21304c.

(I) Identification of exposure risks from drinking water, direct contact, groundwater, soil excavation, or relocation.

(*ii*) Confirms that there are no current plans to relocate, vacate, or abandon the public highway.

(*iii*) Either provides a certification to the person that owns or operates the public highway that any contamination present as a result of the release from the underground storage tank system does not enter a storm sewer system or provides all information necessary to clearly identify the nature and extent of the

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contamination that enters or has the potential to enter the storm sewer system.

(4) A person that applies for a permit issued by a county road commission or a local unit of government to excavate, bore, drill, or perform any other intrusive activity within a public highway or right-of-way of a public highway shall identify whether the proposed work will take place within an area being relied upon as an alternative institutional control.

(5) Reliance on a public highway as an alternative mechanism under subsection (3)(b) does not affect an owner's or operator's liability under section 21323a or impose liability for corrective action or any other obligation on the state transportation department, a county road commission, or a local unit of government. Information provided pursuant to section 21310a(3) or (4) to the person that owns or operates a public highway does not create an estoppel, obligation, or liability on the person that owns or operates the public highway. The use of a public highway as an alternative mechanism does not limit or restrict any right or duty of the state transportation department, a county road commission, or a local unit of government to operate, maintain, repair, reconstruct, enlarge, relocate, abandon, vacate, or otherwise exercise its jurisdiction over any public highway or public highway right-of-way or any part thereof, or to permit any utilities or others to use any public highway or public highway right-of-way, or any part thereof.

(6) A person that implements corrective action activities that relies on land use restrictions shall provide notice of the land use restrictions that are part of the corrective action plan to the local unit of government in which the site is located within 30 days of filing of the land use restrictions with the county register of deeds.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2016, Act 381, Eff. Mar. 29, 2017.

Popular name: Act 451

Popular name: NREPA

324.21311 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to groundwater contamination and related reports.

Popular name: Act 451

Popular name: NREPA

324.21311a Final assessment report; information; providing supporting documentation upon request.

Sec. 21311a. (1) Within 365 days after a release has been discovered, an owner or operator that is liable under section 21323a shall complete a final assessment report that includes a corrective action plan developed under section 21309a and submit the report to the department on a form created pursuant to section 21316. The report shall include the following information:

(a) A site assessment under the RBCA process, as necessary for determining site classification, and the extent of contamination relative to the applicable RBSLs or applicable SSTLs set forth in the corrective action plan.

(b) Tier II and tier III evaluation, as appropriate, under the RBCA process.

(c) A feasibility analysis. The following shall be included, as appropriate, given the site conditions and the applicable RBSL or applicable SSTL:

(*i*) On-site and off-site corrective action alternatives to remediate contaminated soil and groundwater for each cleanup type above the applicable RBSL or applicable SSTL, including alternatives that permanently and significantly reduce the volume, toxicity, and mobility of the regulated substances if above the applicable RBSL or applicable SSTL.

(*ii*) An analysis of the recoverability and whether the NAPL is mobile or migrating.

(*iii*) The costs associated with each corrective action alternative including alternatives that permanently and significantly reduce the volume, toxicity, and mobility of the regulated substances that are above the applicable RBSL or applicable SSTL.

(*iv*) The effectiveness and feasibility of each corrective action alternative in meeting cleanup criteria that are above the applicable RBSL or applicable SSTL.

(*v*) The time necessary to implement and complete each corrective action alternative.

(*vi*) The preferred corrective action alternative based upon subparagraphs (*i*) through (*v*) and an implementation schedule for completion of the corrective action.

(d) A corrective action plan.

(e) A schedule for corrective action plan implementation.

(2) The owner or operator that is liable under section 21323a shall provide supporting documentation to the data and conclusions of the final assessment report upon request by the department. The department shall not

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require any additional information beyond that required under this section to be included in its final assessment report.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 110, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21312 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to owner or operator of petroleum underground storage tank system, conditions, and corrective action.

Popular name: Act 451

Popular name: NREPA

324.21312a Closure report; information; confirmation of receipt by department; additional information.

Sec. 21312a. (1) Upon completion of the corrective action, the owner or operator that is liable under section 21323a shall complete a closure report and submit the report to the department on a form created pursuant to section 21316. The report shall include the following information:

(a) A summary of corrective action activities and documentation of the basis for concluding that corrective actions have been completed.

(b) Closure verification sampling results. Groundwater samples shall be collected utilizing a low-flow technique for closure verification or other method approved by the department.

(c) The person submitting a closure report shall include a signed affidavit attesting to the fact that the information upon which the closure report is based is complete and true to the best of that person's knowledge. The closure report shall also include a signed affidavit from the consultant who prepared the closure report attesting to the fact that the corrective actions detailed in the closure report comply with all applicable requirements under the applicable RBCA standard and that the information upon which the closure report is based is true and accurate to the best of that consultant's knowledge. In addition, the consultant shall attach a certificate of insurance demonstrating that the consultant has obtained at least all of the insurance required under section 21325.

(d) A person submitting a closure report shall maintain all documents and data prepared, acquired, or relied upon in connection with the closure report for not less than 6 years after the date on which the closure report was submitted. All documents and data required to be maintained under this section shall be made available to the department upon request.

(2) Within 60 days after receipt of a closure report under subsection (1), the department shall provide the owner or operator that is liable under section 21323a who submitted the closure report with a confirmation of the department's receipt of the report.

(3) The department shall not require any additional information beyond that required under this section to be included in a closure report.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 110, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21313 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to Type A or B cleanup.

Popular name: Act 451

Popular name: NREPA

324.21313a Failure to provide required submittal; penalty; computing period of time; extension of reporting deadline; contract provision for payment of fines; disposition of money collected; accrual of penalty.

Sec. 21313a. (1) Beginning on May 1, 2012, except as provided in subsection (6), and except for the confirmation provided in section 21312a(2), if a required submittal under section 21308a, 21311a, or 21312a(1) is not provided during the time required, the department may impose a penalty according to the following schedule:

(a) Not more than $100.00 per day for the first 7 days that the report is late.

(b) Not more than $500.00 per day for days 8 through 14 that the report is late.

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(c) Not more than $1,000.00 per day for each day beyond day 14 that the report is late.

(2) Subject to subsection (6), for purposes of this section, in computing a period of time, the day of the act, event, or default, after which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, legal holiday, or holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or holiday.

(3) The department may, upon request, grant an extension to a reporting deadline provided in this part for good cause upon written request 15 days prior to the deadline.

(4) The owner or operator that is liable under section 21323a may by contract transfer the responsibility for paying fines under this section to a consultant retained by the owner or operator that is liable under section 21323a.

(5) The department shall forward all money collected pursuant to this section to the state treasurer for deposit in the emergency response fund created in section 21507.

(6) A penalty shall not begin to accrue under this section unless the department has first notified the person on whom the penalty is imposed that he or she is subject to the penalties provided in this section.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 112, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21314 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to retaining consultants.

Popular name: Act 451

Popular name: NREPA

324.21314a Classification of sites; corrective action; schedule.

Sec. 21314a. Sites shall be classified consistent with the process outlined in RBCA. If the department determines that no imminent risk to the public health, safety, or welfare or the environment exists at a site, the department may allow corrective action at these sites to be conducted on a schedule approved by the department.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21315 Audit; final assessment report or closure report.

Sec. 21315. (1) The department shall design and implement a program to selectively audit final assessment reports and closure reports submitted under this part. Upon receipt of a final assessment report or closure report, the department shall have 90 days to determine whether it will audit the report and inform the owner or operator that is liable under section 21323a of its intention to audit the submitted report within 7 days of the determination. If the department does not inform the owner or operator that is liable under section 21323a of its intention to audit the report within the required time limits, the department shall not audit the report. If the department determines that it will conduct an audit, the audit shall be completed within 180 days of the submission. The department shall inform the owner or operator that is liable under section 21323a in writing of the results of the audit within 14 days of the completion of the audit. All audits shall be conducted based on the standards, criteria, and procedures in effect at the time the final assessment report or closure report was submitted.

(2) The department shall have until January 27, 2013 to selectively audit final assessment reports or closure reports that were submitted on or after November 1, 2011 but not later than July 1, 2012.

(3) If the department conducts an audit, the results of the audit shall approve, approve with conditions, or deny the final assessment report or closure report or shall notify the owner or operator that is liable under section 21323a that the report does not contain sufficient information for the department to make a decision. If the department's response is that the report does not include sufficient information, the department shall identify the information that is required for the department to make a decision. If a report is approved with conditions, the department's approval shall state with specificity the conditions of the approval.

(4) If the department does not perform an audit and provide a written response in accordance with subsection (1) to a final assessment report or closure report submitted after June 15, 2012, the report is considered approved. An owner or operator that is liable under section 21323a may request written confirmation from the department that the report is considered approved under this section, and the

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department shall provide written confirmation within 14 days of the request.

(5) Any time frame required by this section may be extended by mutual agreement of the department and an owner or operator that is liable under section 21323a submitting a final assessment or closure report. An agreement extending a time frame shall be in writing.

(6) If an audit conducted under this section does not confirm that corrective action has been conducted in compliance with this part or does not confirm that applicable RBSLs or SSTLs have been met, the department shall include both of the following in the written response as required in subsection (1):

(a) The specific deficiencies and the section or sections of this part or rules applicable to this part or applicable RBCA standard that support the department's conclusion of noncompliance or that applicable RBSLs or SSTLs have not been met.

(b) Recommendations about corrective actions or documentation that may address the deficiencies identified under subsection (6)(a).

(7) If the department denies a final assessment report or closure report under this section, an owner or operator that is liable under section 21323a shall either revise and resubmit the report for approval, submit a petition for review of scientific or technical disputes to the response activity review panel pursuant to section 20114e and pay a fee in the amount of $300.00 in lieu of the $3,500.00 fee set forth in section 20114e(7), or submit a petition to the department's office of administrative hearings for a contested case hearing pursuant to section 21332.

(8) Notwithstanding section 21312a, after conducting an audit under this section, the department may issue a closure letter for any site that meets the applicable RBSL or SSTL pursuant to section 21304a.

(9) The department shall only audit a report required under this part 1 time. If the report does not contain sufficient information for the department to make a decision or the department's audit identifies deficiencies as described in subsection (6), the department may audit a revised report if sufficient information is provided for the department to make a decision or, to evaluate whether the identified deficiencies have been corrected, which shall be completed within 90 days of the revised report's submission to the department.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21316 Use of forms.

Sec. 21316. The department may create and require the use of forms containing information specifically required under this part to assist in the reporting requirements provided in this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21316a Delivery of regulated substance to underground storage tank as misdemeanor; penalty; notice of violation; placard; tampering with placard as misdemeanor; commencement of criminal actions.

Sec. 21316a. (1) A person shall not knowingly deliver a regulated substance to an underground storage tank system that has had a placard affixed to it under subsection (2). A person that knowingly delivers a regulated substance to an underground storage tank system that has had a placard affixed to it under subsection (2) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both. A person is considered to have knowledge if placards have been affixed to the underground storage tank system at the property and are visible at the time of the delivery.

(2) The department, upon discovery of the operation of an underground storage tank system in violation of this part, rules promulgated under this part, part 211, or rules promulgated under part 211, shall provide notification prohibiting delivery of regulated substances to the underground storage tank system by affixing a placard providing notice of the violation in plain view to the underground storage tank system. The department shall provide a minimum of 15 days' notice to the owner or operator that is liable under section 21323a prior to affixing a placard for violations of this part or rules promulgated under this part, unless the violation causes an imminent and substantial endangerment to the public health, safety, or welfare or the environment.

(3) A person shall not remove, deface, alter, or otherwise tamper with a placard affixed to an underground storage tank system pursuant to subsection (2). A person that knowingly removes, defaces, alters, or otherwise tampers with a placard affixed to an underground storage tank system pursuant to subsection (2) such that the

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notification is not discernible is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both.

(4) The attorney general or, upon request by the department, county prosecuting attorney may commence criminal actions for violation of subsections (1) and (3) in the circuit court of the county where the violation occurred.

History: Add. 1995, Act 22, Eff. May 14, 1995;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21317-324.21319 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed sections pertained to type C cleanup, corrective action plans, and issuance of orders.

Popular name: Act 451

Popular name: NREPA

324.21319a Administrative order.

Sec. 21319a. (1) In accordance with this section, if the department determines that there may be an imminent risk to the public health, safety, or welfare, or the environment, because of a release or threatened release, the department may require an owner or operator that is liable under section 21323a to take action as may be necessary to abate the danger or threat.

(2) The department may issue an administrative order to an owner or operator that is liable under section 21323a requiring that person to perform corrective actions relating to a site, or to take any other action required by this part. An order issued under this section shall state with reasonable specificity the basis for issuance of the order and specify a reasonable time for compliance.

(3) Within 30 days after issuance of an administrative order under this section, a person to whom the order was issued shall indicate in writing whether the person intends to comply with the order.

(4) A person who, without sufficient cause, violates or fails to properly comply with an administrative order issued under this section is liable for either or both of the following:

(a) A civil fine of not more than $25,000.00 for each day during which the violation occurs or the failure to comply continues. A fine imposed under this subsection shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the administrative order.

(b) For exemplary damages in an amount at least equal to the amount of any costs of corrective action incurred by the state as a result of a failure to comply with an administrative order but not more than 3 times the amount of these costs.

(5) A person to whom an administrative order was issued under this section may appeal the administrative order pursuant to section 21333.

History: Add. 1995, Act 22, Eff. May 14, 1995;—Am. 2012, Act 112, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21320 Corrective actions by department.

Sec. 21320. If the department learns of a suspected or confirmed release from an underground storage tank system, the department may undertake corrective actions necessary to protect the public health, safety, or welfare or the environment at sites where persons that are liable are not financially viable or not readily identifiable, at sites where persons that are liable have not implemented corrective action necessary to abate an imminent and substantial endangerment, or to facilitate brownfield redevelopment.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21321, 324.21322 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed sections pertained to failure to submit report within required time and liability imposed on owner or operator.

Popular name: Act 451

Popular name: NREPA

324.21323 Commencement of civil action by attorney general; return or retention of federal

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funds.

Sec. 21323. (1) The attorney general may, on behalf of the department, commence a civil action seeking any of the following:

(a) A temporary or permanent injunction.

(b) Recovery of all costs incurred by the state for taking corrective action.

(c) Damages for the full injury done to the natural resources of this state along with enforcement and litigation costs incurred by the state.

(d) Declaratory judgment on liability for future corrective action costs.

(e) Subject to section 21313a, a civil fine of not more than $10,000.00 for each underground storage tank system for each day of noncompliance with a requirement of this part or a rule promulgated under this part. A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the part or rule.

(f) A civil fine of not more than $25,000.00 for each day of noncompliance with a corrective action order issued pursuant to this part. A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the corrective action order.

(g) Recovery of funds provided to the state from the United States environmental protection agency's leaking underground storage tank trust fund.

(2) A civil action brought under subsection (1) may be brought in the circuit court for the county where the release occurred or for the county where the defendant resides.

(3) The state may, when appropriate, return to the United States environmental protection agency any federal funds recovered under this part. The state may also retain any federal funds recovered under this part in a separate account for use in implementing this part, with such use subject to approval of the United States environmental protection agency.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 2012, Act 112, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

****** 324.21323a THIS SECTION IS AMENDED EFFECTIVE MARCH 29, 2017: See 324.21323a.amended ******

324.21323a Persons liable under part; persons not liable under part; burden of proof; compliance.

Sec. 21323a. (1) Notwithstanding any other provision of this act, and except as otherwise provided in this section and section 21323c, the following persons are liable under this part:

(a) The owner or operator if the owner or operator is responsible for an activity causing a release or threat of release.

(b) An owner or operator who became an owner or operator on or after March 6, 1996, unless the owner or operator complies with both of the following:

(*i*) A baseline environmental assessment is conducted prior to or within 45 days after the earlier of the date of purchase, occupancy, or foreclosure. For purposes of this section, assessing property to conduct a baseline environmental assessment does not constitute occupancy.

(*ii*) The owner or operator provides a baseline environmental assessment to the department and subsequent purchaser or transferee within 6 months after the earlier of the date of purchase, occupancy, or foreclosure.

(c) The estate or trust of a person described in subdivisions (a) and (b).

(2) Subject to section 21304c, an owner or operator who complies with subsection (1)(b) is not liable for contamination existing at the property on which an underground storage tank system is located at the earlier of the date of purchase, occupancy, or foreclosure, unless the person is responsible for an activity causing the contamination. Subsection (1)(b) does not alter a person's liability with regard to a subsequent release or threat of release from an underground storage tank system if the person is responsible for an activity causing the subsequent release or threat of release.

(3) Notwithstanding subsection (1), the following persons are not liable under this part with respect to contamination at property on which an underground storage tank system is located resulting from a release or threat of release unless the person is responsible for an activity causing that release or threat of release:

(a) The state or a local unit of government that acquired ownership or control of the property involuntarily through bankruptcy, tax delinquency, abandonment, a transfer from a lender or other circumstances in which the government involuntarily acquires title or control by virtue of its governmental function or as provided in this part, a local unit of government to which ownership or control of property is transferred by the state or by

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another local unit of government that is not liable under subsection (1), or the state or a local unit of government that acquired ownership or control of property by seizure, receivership, or forfeiture pursuant to the operation of law or by court order.

(b) A state or local unit of government that holds or acquires an easement interest in property, holds or acquires an interest in property by dedication in a plat, or by dedication pursuant to the public highways and private roads act, 1909 PA 283, MCL 220.1 to 239.6, or otherwise holds or acquires an interest in property for a transportation or utility corridor, including sewers, pipes, and pipelines, or public rights-of-way.

(c) A person that holds an easement interest in property or holds a utility franchise to provide service, for the purpose of conveying or providing goods or services, including, but not limited to, utilities, sewers, roads, railways, and pipelines; or a person that acquires access through an easement.

(d) A person that owns severed subsurface mineral rights or severed subsurface formations or who leases subsurface mineral rights or formations.

(e) The state or a local unit of government that leases property to a person if the state or the local unit of government is not liable under this part for environmental contamination at the property.

(f) A person that acquires property as a result of the death of the prior owner or operator of the property, whether by inheritance, devise, or transfer from an inter vivos or testamentary trust.

(g) A person that did not know and had no reason to know that the property was contaminated. To establish that the person did not know and did not have a reason to know that the property was contaminated, the person shall have undertaken at the time of acquisition all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice. A determination of liability under this section shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated by a regulated substance, commonly known or reasonable ascertainable information about the property, the obviousness of the presence or likely presence of a release or threat of release at the property, and the ability to detect a release or threat of release by appropriate inspection.

(h) A utility performing normal construction, maintenance, and repair activities in the normal course of its utility service business. This subdivision does not apply to property owned by the utility.

(i) A lessee who uses the leased property for a retail, office, or commercial purpose regardless of the level of the lessee's regulated substance use unless the lessee is otherwise liable under this section.

(4) Notwithstanding subsection (1), the following persons are not liable under this part:

(a) A lender that engages in or conducts a lawful marshaling or liquidation of personal property if the lender does not cause or contribute to the environmental contamination. This includes holding a sale of personal property on a portion of the property.

(b) A person that owns or operates property onto which contamination has migrated unless that person is responsible for an activity causing the release that is the source of the contamination.

(c) A person that owns or operates property on which the release or threat of release was caused solely by 1 or more of the following:

(*i*) An act of God.

(*ii*) An act of war.

(*iii*) An act or omission of a third party other than an employee or agent of the person or a person in a contractual relationship existing either directly or indirectly with a person that is liable under this section.

(d) Any person for environmental contamination addressed in a closure report that is approved by the department or is considered approved under section 21315(4). Notwithstanding this subdivision, a person may be liable under this part for the following:

(*i*) A subsequent release not addressed in the closure report if the person is otherwise liable under this part for that release.

(*ii*) Environmental contamination that is not addressed in the closure report and for which the person is otherwise liable under this part.

(*iii*) If the closure report relies on land use or resource use restrictions, a person who desires to change those restrictions is responsible for any corrective action necessary to comply with this part for any land use or resource use other than the land use or resource use that was the basis for the closure report.

(*iv*) If the closure report relies on monitoring necessary to assure the effectiveness and integrity of the corrective action, an owner or operator that is liable under section 21323a for environmental contamination addressed in a closure report is liable under this part for additional corrective action activities necessary to address any potential exposure to the environmental contamination demonstrated by the monitoring in excess of the levels relied on in the closure report.

(*v*) If the corrective actions that were the basis for the closure report fail to meet performance objectives that are identified in the closure report or section 21304a, an owner or operator that is liable under section

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21323a for environmental contamination addressed in the closure report is liable under this part for corrective action necessary to satisfy the performance objectives or otherwise comply with this part.

(5) Notwithstanding any other provision of this part, the state or a local unit of government or a lender who has not participated in the management of the property is not liable under this part for costs or damages as a result of corrective action taken in response to a release or threat of release. For a lender, this subsection applies only to corrective action undertaken prior to foreclosure. This subsection does not preclude liability for costs or damages as a result of gross negligence, including reckless, willful, or wanton misconduct, or intentional misconduct by the state or local unit of government.

(6) In establishing liability under this section, the department bears the burden of proof.

(7) An owner or operator who was in compliance with subsection (1)(b) prior to May 1, 2012 is considered to be in compliance with subsection (1)(b).

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

***** *324.21323a.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 29, 2017* *****

324.21323a.amended Liability under part; burden of proof; compliance.

Sec. 21323a. (1) Notwithstanding any other provision of this act, and except as otherwise provided in this section and section 21323c, the following persons are liable under this part:

(a) The owner or operator if the owner or operator is responsible for an activity causing a release or threat of release.

(b) An owner or operator who became an owner or operator on or after March 6, 1996, unless the owner or operator complies with the following:

(*i*) A baseline environmental assessment is conducted prior to or within 45 days after the earlier of the date of purchase, occupancy, or foreclosure. For purposes of this section, assessing property to conduct a baseline environmental assessment does not constitute occupancy.

(*ii*) The owner or operator provides a baseline environmental assessment to the department and subsequent purchaser or transferee within 6 months after the earlier of the date of purchase, occupancy, or foreclosure.

(*iii*) If the owner or operator fails to meet the time frames in subparagraphs (*i*) and (*ii*), the owner or operator requests and receives from the department a determination that its failure to comply with the time frames was inconsequential.

(c) The estate or trust of a person described in subdivisions (a) and (b).

(2) Subject to section 21304c, an owner or operator who complies with subsection (1)(b) is not liable for contamination existing at the property on which an underground storage tank system is located at the earlier of the date of purchase, occupancy, or foreclosure, unless the person is responsible for an activity causing the contamination. Subsection (1)(b) does not alter a person's liability with regard to a subsequent release or threat of release from an underground storage tank system if the person is responsible for an activity causing the subsequent release or threat of release.

(3) Notwithstanding subsection (1), the following persons are not liable under this part with respect to contamination at property on which an underground storage tank system is located resulting from a release or threat of release unless the person is responsible for an activity causing that release or threat of release:

(a) This state, a county road commission, or a local unit of government if it acquired ownership or control of the property involuntarily through bankruptcy, tax delinquency, abandonment, a transfer from a lender or other circumstances in which the government involuntarily acquires title or control by virtue of its governmental function or as provided in this part; a county road commission or a local unit of government to which ownership or control of property is transferred by this state, by a county road commission, or by another local unit of government that is not liable under subsection (1); or this state, a county road commission, or a local unit of government if it acquired ownership or control of property by seizure, receivership, or forfeiture pursuant to the operation of law or by court order.

(b) This state, a county road commission, or a local unit of government if it holds or acquires an easement interest in property, holds or acquires an interest in property by dedication in a plat, or by dedication pursuant to the public highways and private roads act, 1909 PA 283, MCL 220.1 to 239.6, or otherwise holds or acquires an interest in property for a transportation or utility corridor, including sewers, pipes, and pipelines, or public rights-of-way.

(c) A person that holds an easement interest in property or holds a utility franchise to provide service, for the purpose of conveying or providing goods or services, including, but not limited to, utilities, sewers, roads, railways, and pipelines; or a person that acquires access through an easement.

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(d) A person that owns severed subsurface mineral rights or severed subsurface formations or who leases subsurface mineral rights or formations.

(e) This state, a county road commission, or a local unit of government if it leases property to a person and is not liable under this part for environmental contamination at the property.

(f) A person that acquires property as a result of the death of the prior owner or operator of the property, whether by inheritance, devise, or transfer from an inter vivos or testamentary trust.

(g) A person that did not know and had no reason to know that the property was contaminated. To establish that the person did not know and did not have a reason to know that the property was contaminated, the person shall have undertaken at the time of acquisition all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice. A determination of liability under this section shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated by a regulated substance, commonly known or reasonable ascertainable information about the property, the obviousness of the presence or likely presence of a release or threat of release at the property, and the ability to detect a release or threat of release by appropriate inspection.

(h) A utility performing normal construction, maintenance, and repair activities in the normal course of its utility service business. This subdivision does not apply to property owned by the utility.

(i) A lessee who uses the leased property for a retail, office, or commercial purpose regardless of the level of the lessee's regulated substance use unless the lessee is otherwise liable under this section.

(4) Notwithstanding subsection (1), the following persons are not liable under this part:

(a) A lender that engages in or conducts a lawful marshaling or liquidation of personal property if the lender does not cause or contribute to the environmental contamination. This includes holding a sale of personal property on a portion of the property.

(b) A person that owns or operates property onto which contamination has migrated unless that person is responsible for an activity causing the release that is the source of the contamination.

(c) A person that owns or operates property on which the release or threat of release was caused solely by 1 or more of the following:

(*i*) An act of God.

(*ii*) An act of war.

(*iii*) An act or omission of a third party other than an employee or agent of the person or a person in a contractual relationship existing either directly or indirectly with a person that is liable under this section.

(d) Any person for environmental contamination addressed in a closure report that is approved by the department or is considered approved under section 21315(4). Notwithstanding this subdivision, a person may be liable under this part for the following:

(*i*) A subsequent release not addressed in the closure report if the person is otherwise liable under this part for that release.

(*ii*) Environmental contamination that is not addressed in the closure report and for which the person is otherwise liable under this part.

(*iii*) If the closure report relies on land use or resource use restrictions, a person who desires to change those restrictions is responsible for any corrective action necessary to comply with this part for any land use or resource use other than the land use or resource use that was the basis for the closure report. However, if the closure report relies on an alternate mechanism as provided for in section 21310a and the ordinance, state law, or rule is modified, lapses, or is revoked or the public highway is relocated, vacated, or abandoned, the owner or operator that is liable under section 21323a for the environmental contamination addressed in the closure report shall notify the department 30 days before the ordinance, state law, or rule is modified, lapses, or is revoked or the public highway is relocated, vacated, or abandoned. In such cases, the owner or operator is liable under this part for additional corrective action activities necessary to address any increased risk of exposure to the environmental contamination.

(*iv*) If the closure report relies on monitoring necessary to assure the effectiveness and integrity of the corrective action, an owner or operator that is liable under section 21323a for environmental contamination addressed in a closure report is liable under this part for additional corrective action activities necessary to address any potential exposure to the environmental contamination demonstrated by the monitoring in excess of the levels relied on in the closure report.

(*v*) If the corrective actions that were the basis for the closure report fail to meet performance objectives that are identified in the closure report or section 21304a, an owner or operator that is liable under section 21323a for environmental contamination addressed in the closure report is liable under this part for corrective action necessary to satisfy the performance objectives or otherwise comply with this part.

(5) Notwithstanding any other provision of this part, the state or a local unit of government or a lender who

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has not participated in the management of the property is not liable under this part for costs or damages as a result of corrective action taken in response to a release or threat of release. For a lender, this subsection applies only to corrective action undertaken prior to foreclosure. This subsection does not preclude liability for costs or damages as a result of gross negligence, including reckless, willful, or wanton misconduct, or intentional misconduct by this state or local unit of government.

(6) In establishing liability under this section, the department bears the burden of proof.

(7) An owner or operator who was in compliance with subsection (1)(b) prior to May 1, 2012 is considered to be in compliance with subsection (1)(b).

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2016, Act 381, Eff. Mar. 29, 2017.

Popular name: Act 451

Popular name: NREPA

324.21323b Joint and several liability; recovery of costs.

Sec. 21323b. (1) Except as provided in section 21323a(2), a person that is liable under section 21323a is jointly and severally liable for all of the following:

(a) All costs of corrective action lawfully incurred by the state relating to the selection and implementation of corrective action under this part.

(b) All costs of corrective action reasonably incurred under the circumstances by any other person.

(c) Damages for the full value of injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release.

(2) The costs of corrective action recoverable under subsection (1) shall also include all costs of corrective action reasonably incurred by the state prior to the promulgation of rules relating to the selection and implementation of corrective action under this part. A person challenging the recovery of costs under this subsection has the burden of establishing that the costs were not reasonably incurred under the circumstances that existed at the time the costs were incurred.

(3) The amounts recoverable in an action under this section may include interest, attorney fees, witness fees, and the costs of litigation to the prevailing or substantially prevailing party. The interest shall accrue from the date payment is demanded in writing, or the date of the expenditure or damage, whichever is later. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified in section 6013(8) of the revised judicature act of 1961, 1961 PA 236, MCL 600.6013.

(4) In the case of injury to, destruction of, or loss of natural resources under subsection (1)(c), liability shall be to the state for natural resources belonging to, managed by, controlled by, appertaining to, or held in trust by the state or a local unit of government. Sums recovered by the state under this part for natural resource damages shall be retained by the department for use only to restore, repair, replace, or acquire the equivalent of the natural resources injured or acquire substitute or alternative resources. There shall be no double recovery under this part for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, replacement, or acquisition, for the same release and natural resource.

(5) A person shall not be required under this part to undertake corrective action for a permitted release. Recovery by any person for corrective action costs or damages resulting from a permitted release shall be pursuant to other applicable law, in lieu of this part. With respect to a permitted release, this subsection does not affect or modify the obligations or liability of any person under any other state law, including common law, for damages, injury, or loss resulting from a release of a regulated substance or for corrective action or the costs of corrective action.

(6) If the department determines that there may be an imminent and substantial endangerment to the public health, safety, or welfare or to the environment because of an actual or threatened release from an underground storage tank system, the attorney general may bring an action against any person that is liable under section 21323a or any other appropriate person to secure the relief that may be necessary to abate the danger or threat. The court has jurisdiction to grant such relief as the public interest and the equities of the case may require.

(7) The costs recoverable under this section may be recovered in an action brought by the state or any other person.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323c Liability of corrective action contractor; "corrective action contract" and

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"corrective action contractor" defined; liability if act or failure to act consistent with national contingency plan or directed by federal on-scene coordinator or director; damages; definitions; burden of proof.

Sec. 21323c. (1) Except as otherwise provided in this section, a person that is a corrective action contractor for any release or threatened release is not liable to any person for injuries, costs, damages, expenses, or other liability, including, but not limited to, claims for indemnification or contribution and claims by third parties for death, personal injuries, illness, or loss of or damages to property or economic loss that result from the release or threatened release. This subsection does not apply if a release or threatened release is caused by conduct of the corrective action contractor that is negligent or grossly negligent or that constitutes intentional misconduct.

(2) Subsection (1) does not affect the liability of a person under any warranty under federal, state, or common law. This subsection does not affect the liability of an employer who is a corrective action contractor to any employee of the employer under law, including any law relating to worker's compensation.

(3) An employee of this state or a local unit of government who provides services relating to a corrective action while acting within the scope of his or her authority as a governmental employee has the same exemption from liability as is provided to the corrective action contractor under subsection (1).

(4) Except as provided in this section, this section does not affect the liability under this part or under any other federal or state law of any person.

(5) As used in subsections (1) to (4):

(a) "Corrective action contract" means a contract or agreement entered into by a corrective action contractor with 1 or more of the following:

(*i*) The department.

(*ii*) The department of community health.

(*iii*) A person that is arranging for corrective action under this part.

(b) "Corrective action contractor" means all of the following:

(*i*) A person that enters into a corrective action contract with respect to a release or threatened release and is carrying out the terms of a contract.

(*ii*) A person that is retained or hired by a person described in subparagraph (*i*) to provide any service relating to a corrective action.

(*iii*) A qualified underground storage tank consultant.

(6) Notwithstanding any other provision of law, a person is not liable for corrective action costs or damages that result from an act or a failure to act in the course of rendering care, assistance, or advice with respect to a release of petroleum into or on the surface waters of the state or on the adjoining shorelines to the surface waters of the state if the act or failure to act was consistent with the national contingency plan or as otherwise directed by the federal on-scene coordinator or the director. This subsection does not apply to any of the following:

(a) A person that is liable under section 21323a that is a responsible party.

(b) An action with respect to personal injury or wrongful death.

(c) A person that is grossly negligent or engages in willful misconduct.

(7) A person that is liable under section 21323a and that is a responsible party is liable for any corrective action costs and damages that another person is relieved of under subsection (6).

(8) As used in this subsection and subsections (6) and (7):

(a) "Damages" means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the release or threatened release of petroleum.

(b) "Federal on-scene coordinator" means the federal official predesignated by the United States environmental protection agency or the United States coast guard to coordinate and direct federal responses under the national contingency plan or the official designated by the lead agency to coordinate and direct corrective action under the national contingency plan.

(c) "National contingency plan" means the national contingency plan prepared and published under section 311 of title III of the federal water pollution control act, 33 USC 1321.

(9) This section does not affect a plaintiff's burden of establishing liability under this part.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323d Basis for division of harm; action for contribution; reallocation of uncollectible amount; effect of consent order.

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Sec. 21323d. (1) If 2 or more persons acting independently are liable under section 21323a and there is a reasonable basis for division of harm according to the contribution of each person, each person is subject to liability under this part only for the portion of the total harm attributable to that person. However, a person seeking to limit that person's liability on the grounds that the entire harm is capable of division has the burden of proof as to the divisibility of the harm and as to the apportionment of liability.

(2) If 2 or more persons are liable under section 21323a for an indivisible harm, each person is subject to liability for the entire harm.

(3) A person may seek contribution from any other person that is liable under section 21323a during or following a civil action brought under this part. This subsection does not diminish the right of a person to bring an action for contribution in the absence of a civil action by the state under this part. In a contribution action brought under this part, the court shall consider all of the following factors in allocating corrective action costs and damages among liable persons:

(a) Each person's relative degree of responsibility in causing the release or threat of release.

(b) The principles of equity pertaining to contribution.

(c) The degree of involvement of and care exercised by the person with regard to the regulated substance.

(d) The degree of cooperation by the person with federal, state, or local officials to prevent, minimize, respond to, or remedy the release or threat of release.

(e) Whether equity requires that the liability of some of the persons should constitute a single share.

(4) If, in an action for contribution under subsection (3), the court determines that all or part of a person's share of liability is uncollectible from that person, then the court may reallocate any uncollectible amount among the other liable persons according to the factors listed in subsection (3). A person whose share is determined to be uncollectible continues to be subject to contribution and to any continuing liability to the state.

(5) A person that has resolved that person's liability to the state in an administrative or judicially approved consent order is not liable for claims for contribution regarding matters addressed in the consent order. The consent order does not discharge any of the other persons liable under section 21323a unless the terms of the consent order provide for this discharge, but the potential liability of the other persons is reduced by the amount of the consent order.

(6) A person that is not liable under this part, including a person that was issued a written determination under former section 20129a affirming that the person meets the criteria for an exemption from liability, and that is otherwise in compliance with section 21304c, shall be considered to have resolved that person's liability to the state in an administratively approved settlement under the applicable federal law and shall by operation of law be granted contribution protection under federal law and under this part in the same manner that contribution protection is provided pursuant to subsection (5).

(7) If the state obtains less than complete relief from a person that has resolved that person's liability to the state in an administrative or judicially approved consent order under this part, the state may bring an action against any other person liable under section 21323a that has not resolved that person's liability.

(8) A person that has resolved that person's liability to the state for some or all of a corrective action in an administrative or judicially approved consent order may seek contribution from any person that is not a party to the consent order described in subsection (5).

(9) In an action for contribution under this section, the rights of any person that has resolved that person's liability to the state is subordinate to the rights of the state, if the state files an action under this part.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323e Effect of indemnification, hold harmless, or similar agreement or conveyance.

Sec. 21323e. (1) An indemnification, hold harmless, or similar agreement or conveyance is not effective to transfer from a person that is liable under section 21323a to the state for evaluation or corrective action costs or damages for a release or threat of release to any other person the liability imposed under this part. This section does not bar an agreement to insure, hold harmless, or indemnify a party to the agreement for liability under this part.

(2) This part does not bar a cause of action that a person subject to liability under this part, or a guarantor, has or would have by reason of subrogation or otherwise against any person.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

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324.21323f Costs and damages; limitation.

Sec. 21323f. (1) Except as provided in subsection (2), the liability under this part for each release or threat of release shall not exceed the total of all the costs of corrective action and fines, plus $50,000,000.00 damages for injury to, destruction of, or loss of natural resources resulting from the release or threat of release, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release or threat of release.

(2) Notwithstanding the limitations in subsection (1), the liability of a person under this part shall be the full and total costs and damages listed in subsection (1), in either of the following circumstances:

(a) The release or threatened release of a regulated substance was the result of willful misconduct or gross negligence of the party.

(b) The primary cause of the release or threat of release was a knowing violation of applicable safety, construction, or operating standards or regulations.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323g Covenant not to sue; conditions; effect; factors; covenant not to sue concerning future liability; exception; provisions providing for future enforcement action.

Sec. 21323g. (1) The state may provide a person with a covenant not to sue concerning any liability to the state under this part, including future liability, resulting from a release or threatened release addressed by corrective action, whether that action is on or off the property on which an underground storage tank system is located, if each of the following is met:

(a) The covenant not to sue is in the public interest.

(b) The covenant not to sue would expedite corrective action consistent with rules promulgated under this part.

(c) There is full compliance with a consent order under this part for response to the release or threatened release concerned.

(d) The corrective action has been approved by the department.

(2) A covenant not to sue concerning future liability to the state shall not take effect until the department certifies that corrective action has been completed in accordance with the requirements of this part at the property that is the subject of the covenant.

(3) In assessing the appropriateness of a covenant not to sue and any condition to be included in a covenant not to sue, the state shall consider whether the covenant or condition is in the public interest on the basis of factors such as the following:

(a) The effectiveness and reliability of the corrective action, in light of the other alternative corrective actions considered for the property concerned.

(b) The nature of the risks remaining at the property.

(c) The extent to which performance standards are included in the consent order.

(d) The extent to which the corrective action provides a complete remedy for the property, including a reduction in the hazardous nature of the substances at the property.

(e) The extent to which the technology used in the corrective action is demonstrated to be effective.

(f) Whether corrective action will be carried out, in whole or in significant part, by persons that are liable under section 21323a.

(4) A covenant not to sue under this section is subject to the satisfactory performance by a person of that person's obligations under the agreement concerned.

(5) A covenant not to sue a person concerning future liability to the state shall include an exception to the covenant that allows the state to sue that person concerning future liability resulting from the release or threatened release that is the subject of the covenant if the liability arises out of conditions that are unknown at the time the department certifies under subsection (2) that corrective action has been completed at the property concerned.

(6) In extraordinary circumstances, the state may determine, after assessment of relevant factors such as those referred to in subsection (3) and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors, not to include the exception in subsection (5) if other terms, conditions, or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that the public health and the environment will be protected from any future releases at or from the property.

(7) The state may include any provisions providing for future enforcement action that in the discretion of

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the department are necessary and appropriate to assure protection of the public health, safety, and welfare and the environment.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323h Proposal to redevelop or reuse contaminated property; covenant not to sue; conditions; assertion of claims; irrevocable right of entry to department, its contractors, or other persons performing corrective action.

Sec. 21323h. (1) The state may provide a person that proposes to redevelop or reuse property contaminated by a release from an underground storage tank system, including a vacant manufacturing or abandoned industrial site, with a covenant not to sue concerning liability under section 21323a, if all of the following conditions are met:

(a) The covenant not to sue is in the public interest.

(b) The covenant not to sue will yield new resources to facilitate implementation of corrective action.

(c) The covenant not to sue would, when appropriate, expedite corrective action consistent with the rules promulgated under this part.

(d) Based upon available information, the department determines that the redevelopment or reuse of the property is not likely to do any of the following:

(*i*) Exacerbate or contribute to the existing release or threat of release.

(*ii*) Interfere with the implementation of corrective action.

(*iii*) Pose health risks related to the release or threat of release to persons who may be present at or in the vicinity of the property.

(e) The proposal to redevelop or reuse the property has economic development potential.

(2) A person that requests a covenant not to sue under subsection (1) shall demonstrate to the satisfaction of the state all of the following:

(a) That the person is financially capable of redeveloping and reusing the property in accordance with the covenant not to sue.

(b) That the person is not affiliated in any way with any person that is liable under section 21323a for a release or threat of release at the property.

(c) Compliance with section 21304c.

(3) A covenant not to sue issued under this section shall address only past releases or threats of release at a property and shall expressly reserve the right of the state to assert all other claims against the person that proposes to redevelop or reuse the property, including, but not limited to, those claims arising from any of the following:

(a) The release or threat of release of any regulated substance resulting from the redevelopment or reuse of the property to the extent such claims otherwise arise under this part.

(b) Interference with or failure to cooperate with the department, its contractors, or other persons conducting corrective action.

(4) A covenant not to sue issued under this section shall provide for an irrevocable right of entry to the department, its contractors, or other persons performing corrective action related to the release or threat of release addressed by the covenant not to sue and for monitoring compliance with the covenant not to sue.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323i Consent order; final settlement.

Sec. 21323i. (1) The department and the attorney general may enter into a consent order with a person that is liable under section 21323a or any group of persons that are liable under section 21323a to perform corrective action if the department and the attorney general determine that the persons that are liable under section 21323a will properly implement the corrective action and that the consent order is in the public interest, will expedite effective corrective action, and will minimize litigation. The consent order may, as determined appropriate by the department and the attorney general, provide for implementation by a person or any group of persons that are liable under section 21323a of any portion of corrective action at the property. A decision of the attorney general not to enter into a consent order under this part is not subject to judicial review.

(2) Whenever practical and in the public interest, as determined by the department, the department and the

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attorney general shall as promptly as possible reach a final settlement with a person in an administrative or civil action under this part if this settlement involves only a minor portion of the response costs at the property concerned and, in the judgment of the department and the attorney general, the conditions in either of the following are met:

(a) Both of the following are minimal in comparison to other regulated substances at the property:

(*i*) The amount of the regulated substances contributed by that person to the property.

(*ii*) The toxic or other regulated effects of the substances contributed by that person to the property.

(b) Except as provided in subsection (3), the person meets all of the following conditions:

(*i*) The person is the owner of the property on or in which the underground storage tank system is or was located.

(*ii*) The person did not conduct or permit the generation, transportation, storage, treatment, or disposal of any regulated substance at the property.

(*iii*) The person did not contribute to the release or threat of release of a regulated substance at the property through any action or omission.

(3) A settlement shall not be made under subsection (2)(b) if the person purchased the property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of a regulated substance.

(4) A settlement under subsection (2) may be set aside if information obtained after the settlement indicates that the person settling does not meet the conditions set forth in subsection (2)(a) or (b).

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323j Civil action.

Sec. 21323j. (1) Except as otherwise provided in this part, a person, including a local unit of government on behalf of its citizens, whose health or enjoyment of the environment is or may be adversely affected by a release from an underground storage tank system or threat of release from an underground storage tank system, by a violation of this part or a rule promulgated or order issued under this part, or by the failure of the directors to perform a nondiscretionary act or duty under this part, may commence a civil action against any of the following:

(a) An owner or operator who is liable under section 21323a for injunctive relief necessary to prevent irreparable harm to the public health, safety, or welfare or the environment from a release or threatened release in relation to that underground storage tank system on the property on which the underground storage tank system is located.

(b) A person that is liable under section 21323a for a violation of this part or a rule promulgated under this part or an order issued under this part in relation to that underground storage tank system on the property on which the underground storage tank system is located.

(c) One or more of the directors if it is alleged that 1 or more of the directors failed to perform a nondiscretionary act or duty under this part.

(2) The circuit court has jurisdiction in actions brought under subsection (1)(a) to grant injunctive relief necessary to protect the public health, safety, or welfare or the environment from a release or threatened release. The circuit court has jurisdiction in actions brought under subsection (1)(b) to enforce this part or a rule promulgated or order issued under this part by ordering such action as may be necessary to correct the violation and to impose any civil fine provided for in this part for the violation. A civil fine recovered under this section shall be deposited in the general fund. The circuit court has jurisdiction in actions brought under subsection (1)(c) to order 1 or more of the directors to perform the nondiscretionary act or duty concerned.

(3) An action shall not be filed under subsection (1)(a) or (b) unless all of the following conditions exist:

(a) The plaintiff has given at least 60 days' notice in writing of the plaintiff's intent to sue, the basis for the suit, and the relief to be requested to each of the following:

(*i*) The department.

(*ii*) The attorney general.

(*iii*) The proposed defendants.

(b) The state has not commenced and is not diligently prosecuting an action under this part or under other appropriate legal authority to obtain injunctive relief concerning the underground storage tank system or the property on which the underground storage tank system is located or to require compliance with this part or a rule or an order under this part.

(4) An action shall not be filed under subsection (1)(c) until the plaintiff has given in writing at least 60 days' notice to the directors of the plaintiff's intent to sue, the basis for the suit, and the relief to be requested.

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(5) In issuing a final order in an action brought pursuant to this section, the court may award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party.

(6) This section does not affect or otherwise impair the rights of any person under federal, state, or common law.

(7) An action under subsection (1)(a) or (b) shall be brought in the circuit court for the circuit in which the alleged release, threatened release, or other violation occurred. An action under subsection (1)(c) shall be brought in the circuit court for Ingham county.

(8) All unpaid costs and damages for which a person is liable under this part constitute a lien in favor of the state upon a property that has been the subject of corrective action by the state and is owned by that person. A lien under this subsection has priority over all other liens and encumbrances except liens and encumbrances recorded before the date the lien under this subsection is recorded. A lien under this subsection arises when the state first incurs costs for corrective action at the property for which the person is responsible.

(9) If the attorney general determines that the lien provided in subsection (8) is insufficient to protect the interest of the state in recovering corrective action costs at a property, the attorney general may file a petition in the circuit court of the county in which the facility is located seeking either or both of the following:

(a) A lien upon the property owned by the person described in subsection (8), subject to corrective action that takes priority over all other liens and encumbrances that are or have been recorded on the property.

(b) A lien upon real or personal property or rights to real or personal property, other than the property which was the subject of corrective action, owned by the person described in subsection (8), having priority over all other liens and encumbrances except liens and encumbrances recorded prior to the date the lien under this subsection is recorded. However, the following are not subject to the lien provided for in this subsection:

(*i*) Assets of a qualified pension plan or individual retirement account under the internal revenue code.

(*ii*) Assets held expressly for the purpose of financing a dependent's college education.

(*iii*) Up to $500,000.00 in nonbusiness real or personal property or rights to nonbusiness real or personal property, except that not more than $25,000.00 of this amount may be cash or securities.

(10) A petition submitted pursuant to subsection (9) shall set forth with as much specificity as possible the type of lien sought, the property that would be affected, and the reasons the attorney general believes the lien is necessary. Upon receipt of a petition under subsection (3), the court shall promptly schedule a hearing to determine whether the petition should be granted. Notice of the hearing shall be provided to the attorney general, the property owner, and any persons holding liens or perfected security interest in the real property subject to corrective action. A lien shall not be granted under subsection (9) against the owner of the property if the owner is not liable under section 21323a.

(11) In addition to the lien provided in subsections (8) and (9), if the state incurs costs for corrective action that increases the market value of real property that is the location of a release or threatened release, the increase in the value caused by the state-funded corrective action, to the extent the state incurred unpaid costs and damages, constitutes a lien in favor of the state upon the real property. This lien has priority over all other liens or encumbrances that are or have been recorded upon the property.

(12) A lien provided in subsection (8), (9), or (11) is perfected against real property when a notice of lien is filed by the department with the register of deeds in the county in which the real property is located. A lien upon personal property provided in subsection (9) is perfected when a notice of lien is filed by the department in accordance with applicable law and regulation for the perfection of a lien on that type of personal property. In addition, the department shall, at the time of the filing of the notice of lien, provide a copy of the notice of lien to the owner of that property by certified mail.

(13) A lien under this section continues until the liability for the costs and damages is satisfied or resolved or becomes unenforceable through the operation of the statute of limitations provided in this part.

(14) Upon satisfaction of the liability secured by the lien, the department shall file a notice of release of lien in the same manner as provided in subsection (12).

(15) If the department, at the time or prior to the time of filing the notice of release of lien pursuant to subsection (14), has made a determination that the person liable under section 21323a has completed all of the corrective action, the department shall execute and file with the notice of release of lien a document stating that all corrective action has been completed.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323k Access to property.

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Sec. 21323k. (1) A person that is liable under section 21323a or a lender that has a security interest in all or a portion of a property on which contamination from a release of regulated substances from an underground storage tank system may file a petition in the circuit court of the county in which the property is located seeking access to the property in order to conduct corrective action. If the court grants access to property under this section, the court may do any of the following:

(a) Provide compensation to the person that owns or operates the property for damages related to the granting of access to the property, including compensation for loss of use of the property.

(b) Enjoin interference with the corrective action.

(c) Grant any other appropriate relief as determined by the court.

(2) If a court grants access to property under this section, the person that owns or operates the property to which access is granted is not liable for either of the following:

(a) A release caused by the corrective action for which access is granted unless the person is otherwise liable under section 21323a.

(b) For conditions associated with the corrective action that may present a threat to public health or safety.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323*l* Limitation period for filing actions.

Sec. 21323*l*. The limitation period for filing actions under this part is as follows:

(a) For the recovery of corrective action costs and natural resources damages pursuant to section 21323b(1)(a), (b), or (c), within 6 years of initiation of physical on-site construction activities for the corrective action at the property by the person seeking recovery, except as provided in subdivision (b).

(b) For 1 or more subsequent actions for recovery of corrective action costs pursuant to section 21323b, at any time during the corrective action, if commenced not later than 3 years after the date of completion of all corrective action at the property.

(c) For civil fines under this part, within 3 years after discovery of the violation for which the civil fines are assessed.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323m Persons exempt from liability.

Sec. 21323m. (1) Except as provided in section 21323b(5), a person that has complied with the requirements of this part or is exempt from liability under this part is not subject to a claim in law or equity for performance of corrective action under part 17, part 31, or common law.

(2) A person who is exempt from liability under section 21323a is not liable for a claim for corrective action costs, fines or penalties, natural resources damages, or equitable relief under part 17, part 31, or common law resulting from the contamination existing on the site or migrating from the site on the earlier of the date of purchase, occupancy, foreclosure or transfer of ownership, or control of the site to the person. The liability protection afforded in this subsection does not extend to a violation of any permit issued under state law. This subsection does not alter a person's liability for violation of section 21304c.

(3) This section does not bar any of the following:

(a) Tort claims unrelated to performance of corrective action.

(b) Tort claims for damages which result from corrective action.

(c) Tort claims related to the exercise or failure to exercise responsibilities under section 21304c.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323n Documentation of due care.

Sec. 21323n. (1) A person may submit to the department documentation of due care compliance regarding a site. The documentation of due care compliance shall be submitted on a form provided by the department and shall contain documentation of compliance with section 21304c prepared by a qualified underground storage tank consultant, and other information required by the department.

(2) Within 45 business days after receipt of documentation of due care compliance under subsection (1) containing sufficient information for the department to make a decision, the department shall approve, approve with conditions, or deny the documentation of due care compliance. If the department does not

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approve the documentation of due care compliance, the department shall provide the person that submitted the documentation the reasons why the documentation of due care compliance was not approved.

(3) A person that disagrees with a decision of the department under this section may submit a petition for review of scientific or technical disputes to the response activity review panel pursuant to section 20114e or submit a petition to the department's office of administrative hearings for a contested case hearing pursuant to section 21332.

History: Add. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21324 Submission of false, misleading, or fraudulent information as felony; penalty; civil fine; retroactive application; "fraudulent" and "fraudulent practice" defined; investigation and commencement of action by attorney general or county prosecutor; subpoena; enforcement; order granting immunity; failure to comply with subpoena; prosecution under other laws not precluded; apportionment of fines.

Sec. 21324. (1) Beginning April 25, 1994, a person who makes or submits or causes to be made or submitted either directly or indirectly a statement, report, confirmation, certification, proposal, or other information under this part knowing that the statement, report, confirmation, certification, proposal, or other information is false or misleading is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than $50,000.00, or both. In addition to any penalty imposed under this subsection, a person convicted under this subsection shall pay restitution to the fund for the amount received in violation of this subsection. For purposes of this subsection, a submission includes transmittal by any means and each such transmittal constitutes a separate submission.

(2) A person who makes or submits or causes to be made or submitted either directly or indirectly a statement, report, confirmation, certification proposal, or other information under this part knowing that the statement, report, confirmation, certification, proposal, or other information is false, misleading, or fraudulent, or who commits a fraudulent practice, is subject to a civil fine of $50,000.00 for each submission or fraudulent practice. In addition to any civil fine imposed under this subsection, a person found responsible under this subsection shall pay restitution to the fund for the amount received in violation of this subsection. The legislature intends that this subsection be given retroactive application. For purposes of this subsection, a submission includes transmittal by any means and each such transmittal constitutes a separate submission.

(3) As used in subsection (2), "fraudulent" or "fraudulent practice" includes, but is not limited to, the following:

(a) Representing that services were done or work was provided that was not done or provided.

(b) Contaminating an otherwise clean resource or site with contaminated soil or product from a contaminated resource or site.

(c) Returning a load of contaminated soil to its original site for reasons other than remediation of the soil.

(d) Causing damage intentionally or as the result of gross negligence to an underground storage tank system, which damage results in a release at a site.

(e) Placing an underground storage tank system at a contaminated site where an underground storage tank system did not previously exist for the purpose of disguising the source of contamination.

(f) Any intentional act or act of gross negligence that causes or allows contamination to spread at a site.

(g) Submitting a false or misleading laboratory report or misrepresenting or falsifying any test result, analysis, or investigation.

(h) Conducting sampling, testing, monitoring, or excavation that is not justified by the site condition.

(i) Falsifying a signature on a statement, report, confirmation, certification, proposal, or other document provided under this part.

(j) Misrepresenting or falsifying the source of data regarding site conditions.

(k) Misrepresenting or falsifying the date upon which a release occurred.

(*l*) Falsely characterizing the contents of an underground storage tank system or reporting regulated substances or parameters other than the substance that was in the underground storage tank system.

(m) Failing to report subsequent suspected or confirmed releases from sites that have had a previously reported release.

(n) Falsifying the date on which an underground storage tank system or any of its components were removed from the ground and site.

(o) Any other act or omission of a false, fraudulent, or misleading nature undertaken to gain compliance or the appearance of compliance with this part.

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(4) The attorney general or county prosecutor may conduct an investigation of an alleged violation of this section and bring an action for a violation of this section.

(5) If the attorney general or county prosecutor has reasonable cause to believe that a person has information or is in possession, custody, or control of any documents or records, however stored or embodied, or tangible object relevant to an investigation for violation of this part, the attorney general or county prosecutor may, before bringing any action, make an ex parte request to a magistrate for issuance of a subpoena requiring that person to appear and be examined under oath or to produce the documents, records, or objects for inspection and copying, or both. Service may be accomplished by any means described in the Michigan court rules. Requests made by the attorney general may be brought in Ingham county.

(6) If a person objects to or otherwise fails to comply with a subpoena served under subsection (5), an action may be brought in district court to enforce the demand. Actions filed by the attorney general may be brought in Ingham county.

(7) The attorney general or county prosecutor may apply to the district court for an order granting immunity to any person who refuses to provide or objects to providing information, documents, records, or objects sought pursuant to this section. If the judge is satisfied that it is in the interest of justice that immunity be granted, he or she shall enter an order granting immunity to the person and requiring them to appear and be examined under oath or to produce the documents, records, or objects for inspection and copying, or both.

(8) A person who fails to comply with a subpoena issued pursuant to subsection (5) or a requirement to appear and be examined pursuant to subsection (7) is subject to a civil fine of not more than $25,000.00 for each day of continued noncompliance.

(9) This section does not preclude prosecutions under the laws of this state including, but not limited to, section 157a, 218, 248, 249, 280, or 422 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.157a, 750.218, 750.248, 750.249, 750.280, and 750.422 of the Michigan Compiled Laws.

(10) All civil fines collected pursuant to this section shall be apportioned in the following manner:

(a) Fifty percent shall be deposited in the general fund and shall be used by the department to fund fraud investigations under this part.

(b) Twenty-five percent shall be paid to the office of the county prosecutor or attorney general, whichever office brought the action.

(c) Twenty-five percent shall be paid to a local police department or sheriff's office, or a city or county health department, if investigation by such office or department led to the bringing of the action. If more than 1 office or department is eligible for payment under this subsection, division of payment shall be on an equal basis. If there is not a local office or department entitled to payment under this subsection, the money shall be deposited into the emergency response fund established in section 21507.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

****** 324.21325 THIS SECTION IS AMENDED EFFECTIVE MARCH 29, 2017: See 324.21325.amended ******

324.21325 Qualified underground tank consultant; requirements.

Sec. 21325. A person shall be considered a qualified underground storage tank consultant if the person meets all of the following requirements:

(a) Experience in all phases of underground storage tank work, including tank removal oversight, site assessment, soil removal, feasibility, design, remedial system installation, remediation management activities, and site closure and possesses or employs at least 1 of the following:

(*i*) A professional engineer license with 3 or more years of relevant corrective action experience, preferably involving underground storage tanks.

(*ii*) A professional geologist certification or a similar approved designation such as a professional hydrologist or a certified groundwater professional, with 3 or more years of relevant corrective action experience, preferably involving underground storage tanks.

(*iii*) A person with a master's degree from an accredited institution of higher education in a discipline of engineering or science and 8 years of full-time relevant experience or a person with a baccalaureate degree from an accredited institution of higher education in a discipline of engineering or science and 10 years of full-time relevant experience. This experience shall be documented with professional and personal references, past employment references and histories, and documentation that all requirements of the occupational safety and health act of 1970, Public Law 91-596, 84 Stat. 1590, and regulations promulgated under that act, and the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, and rules

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promulgated under that act have been met.

(*iv*) A person that was certified by the department as an underground storage tank professional pursuant to section 21543 at the time of the effective date of the amendatory act that added this subparagraph.

(b) The person has all of the following insurance policies written by carriers authorized to write such business, or approved as an eligible surplus lines insurer, by the state and which are placed with an insurer listed in a.m. best's with a rating of no less than B+ VII:

(*i*) Worker's compensation insurance.

(*ii*) Professional liability errors and omissions insurance. This policy may not exclude bodily injury, property damage, or claims arising out of pollution for environmental work and shall be issued with a limit of not less than $1,000,000.00 per occurrence.

(*iii*) Contractor pollution liability insurance with limits of not less than $1,000,000.00 per occurrence, if not included under the professional liability errors and omissions insurance required under subparagraph (*ii*). The insurance requirement under this subparagraph is not required for consultants who do not perform contracting functions.

(*iv*) Commercial general liability insurance with limits of not less than $1,000,000.00 per occurrence and $2,000,000.00 aggregate.

(*v*) Automobile liability insurance with limits of not less than $1,000,000.00 per occurrence.

(c) Has demonstrated compliance with the occupational safety and health act of 1970, Public Law 91-596, 84 Stat. 1590, and the regulations promulgated under that act, and the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, and the rules promulgated under that act, and is able to demonstrate that all such rules and regulations have been complied with during the person's previous corrective action activity.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Compiler's note: Former MCL 324.21325, which pertained to rewards, was repealed by Act 22 of 1995, Imd. Eff. Apr. 13, 1995.

Popular name: Act 451

Popular name: NREPA

***** *324.21325.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 29, 2017* *****

324.21325.amended Qualified underground tank consultant; requirements.

Sec. 21325. A person shall be considered a qualified underground storage tank consultant if the person meets all of the following requirements:

(a) Has experience in all phases of underground storage tank work, including RBCA, tank removal oversight, site assessment, soil removal, feasibility, design, remedial system installation, remediation management activities, and site closure and possesses or employs at least 1 of the following:

(*i*) A professional engineer license with 3 or more years of relevant corrective action experience, preferably involving underground storage tanks.

(*ii*) A professional geologist certification or a similar approved designation such as a professional hydrologist or a certified groundwater professional, with 3 or more years of relevant corrective action experience, preferably involving underground storage tanks.

(*iii*) A person with a master's degree from an accredited institution of higher education in a discipline of engineering or science and 8 years of full-time relevant experience or a person with a baccalaureate degree from an accredited institution of higher education in a discipline of engineering or science and 10 years of full-time relevant experience. This experience shall be documented with professional and personal references, past employment references and histories, and documentation that all requirements of the occupational safety and health act of 1970, Public Law 91-596, 84 Stat 1590, and regulations promulgated under that act, and the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, and rules promulgated under that act have been met.

(*iv*) A person that was certified by the department as an underground storage tank professional pursuant to section 21543 on May 1, 2012.

(b) Has all of the following insurance policies written by carriers authorized to write such business, or approved as an eligible surplus lines insurer, by this state and which are placed with an insurer listed in a.m. best's with a rating of no less than B+ VII:

(*i*) Worker's compensation insurance.

(*ii*) Professional liability errors and omissions insurance. This policy may not exclude bodily injury, property damage, or claims arising out of pollution for environmental work and shall be issued with a limit of not less than $1,000,000.00 per occurrence.

(*iii*) Contractor pollution liability insurance with limits of not less than $1,000,000.00 per occurrence, if

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not included under the professional liability errors and omissions insurance required under subparagraph (*ii*). The insurance requirement under this subparagraph is not required for consultants who do not perform contracting functions.

(*iv*) Commercial general liability insurance with limits of not less than $1,000,000.00 per occurrence and $2,000,000.00 aggregate.

(*v*) Automobile liability insurance with limits of not less than $1,000,000.00 per occurrence.

(c) Has demonstrated compliance with the occupational safety and health act of 1970, Public Law 91-596, 84 Stat 1590, and the regulations promulgated under that act, and the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, and the rules promulgated under that act, and is able to demonstrate that all such rules and regulations have been complied with during the person's previous corrective action activity.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2016, Act 381, Eff. Mar. 29, 2017.

Compiler's note: Former MCL 324.21325, which pertained to rewards, was repealed by Act 22 of 1995, Imd. Eff. Apr. 13, 1995.

Popular name: Act 451

Popular name: NREPA

****** 324.21325a.added THIS ADDED SECTION IS EFFECTIVE MARCH 29, 2017 ******

324.21325a.added Department employees responsible for oversight; training; proficiency.

Sec. 21325a. Department employees who are responsible for the oversight of corrective action or the audits conducted under section 21315 shall be formally trained and demonstrate proficiency in RBCA.

History: Am. 2016, Act 381, Eff. Mar. 29, 2017.

Popular name: Act 451

Popular name: NREPA

324.21326 Furnishing information to department; right of entry; inspections and investigations; powers of attorney general.

Sec. 21326. (1) Upon request of the department for the purpose of conducting an investigation, taking corrective action, or enforcing this part, a person shall furnish the department with all available information about all of the following:

(a) The underground storage tank system and its associated equipment.

(b) The past or present contents of the underground storage tank system.

(c) Any releases and investigations of releases.

(2) The department has the right to enter at all reasonable times in or upon any private or public property for any of the following purposes:

(a) Inspecting an underground storage tank system.

(b) Obtaining samples of any substance from an underground storage tank system.

(c) Requiring and supervising the conduct of monitoring or testing of an underground storage tank system, its associated equipment, or contents.

(d) Conducting monitoring or testing of an underground storage tank system in cases where there is no identified responsible party.

(e) Conducting monitoring or testing, or taking samples of soils, air, surface water, or groundwater.

(f) Taking corrective action.

(g) Inspecting and copying any records related to an underground storage tank system.

(3) All inspections and investigations undertaken by the department under this section shall be commenced and completed with reasonable promptness.

(4) The attorney general, on behalf of the department, may do either of the following:

(a) Petition a court of appropriate jurisdiction for a warrant to authorize access to any private or public property to implement this part.

(b) Commence a civil action pursuant to section 21323 for an order authorizing the department to enter any private or public property as necessary to implement this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2012, Act 113, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21327 Rules; prohibition.

Sec. 21327. (1) Beginning on the effective date of the 2012 amendatory act that amended this section, the

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department shall not promulgate rules to implement this part.

(2) A guideline, bulletin, interpretive statement, operational memorandum, or form with instructions published under this part shall not be given the force and effect of law by the department and is considered merely advisory. The department shall not rely upon a guideline, bulletin, interpretive statement, operational memorandum, or form with instructions to support the department's decision to act or refuse to act. A court shall not rely upon a guideline, bulletin, interpretive statement, operational memorandum, or form with instructions to uphold the department's decision to act or refusal to act.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2012, Act 113, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21328 Agreements.

Sec. 21328. The department may enter into an agreement with a local unit of government or a state or federal agency to aid in the implementation or enforcement of this part and to obtain financial assistance.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21329 Coordination and integration.

Sec. 21329. The department shall coordinate and integrate the provisions of this part with appropriate state and federal law for purposes of administration and enforcement. The coordination and integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21330 Actions taken by state police.

Sec. 21330. This part does not prohibit the department of state police from taking action in any situation in which it is otherwise authorized by law to act.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Popular name: Act 451

Popular name: NREPA

324.21331 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to repeal of part.

Popular name: Act 451

Popular name: NREPA

324.21332 Contested case hearing; petition; hearing.

Sec. 21332. (1) Subject to subsection (2), an owner or operator that is liable under section 21323a may petition the department for a contested case hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, regarding any of the following:

(a) Corrective action proposed, commenced, or completed.

(b) The SSTLs proposed for a site.

(c) The imposition of penalties pursuant to section 21313a.

(d) The results of any audit performed under section 21315.

(e) A decision regarding the documentation of due care compliance under section 21323n.

(2) Upon receipt of a petition from an owner or operator that is liable under section 21323a pursuant to this section, the department shall conduct the hearing pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. However, an issue that was addressed as part of the final decision of the director under section 20114e or that is being considered by the response activity review panel under section 20114e is not eligible for review as part of a contested case hearing under this section.

History: Add. 2012, Act 109, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21333 Appeal of final agency decision.

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Sec. 21333. An owner or operator that is liable under section 21323a may appeal a final agency decision to affix a placard under section 21316a(2) or issue an administrative order under section 21319a(2) to the circuit court for the county where the underground storage tank system is located or the Ingham county circuit court in the same manner as and according to the same procedures provided for appeals to the circuit court under section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631. The court shall set aside the final agency decision if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:

(a) In violation of the constitution or a statute.

(b) In excess of the statutory authority or jurisdiction of the agency.

(c) Made upon unlawful procedure resulting in material prejudice to a party.

(d) Not supported by competent, material, and substantial evidence on the whole record.

(e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.

(f) Affected by other substantial and material error of law.

History: Add. 2012, Act 109, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21334 Report to legislative committees.

Sec. 21334. Not later than November 1, 2013 and not later than November 1 of each subsequent year, the department shall submit a report to the standing committees of the senate and house of representatives with jurisdiction primarily pertaining to natural resources and the environment that contains all of the following:

(a) The number of closure reports submitted and approved by the department and the number of closure reports that were approved by operation of law under this part.

(b) The number of closure reports that were submitted to the department and not approved under this part.

(c) The number of contested case hearings held pursuant to section 21332.

(d) The number of issues resolved by the response activity review panel under section 20114e.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

PART 215
UNDERGROUND STORAGE TANK CORRECTIVE ACTION FUNDING

324.21501 Meanings of words and phrases.

Sec. 21501. For purposes of this part, the words and phrases defined in sections 21502 and 21503 have the meanings ascribed to them in those sections.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Underground Storage Tank Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

****** 324.21502 THIS SECTION IS AMENDED EFFECTIVE MARCH 22, 2017: See 324.21502.amended ******

324.21502 Definitions; A to O.

Sec. 21502. As used in this part:

(a) "Administrator" means the administrator of the authority as provided for in section 21525.

(b) "Affiliate" means a person that directly, or indirectly through 1 or more intermediaries, controls the person specified.

(c) "Approved claim" means a claim that is approved pursuant to section 21515.

(d) "Authority" means the underground storage tank authority created in section 21523.

(e) "Board of directors" or "board" means the board of directors of the authority.

(f) "Bond proceeds account" means the account within the fund to which proceeds of bonds or notes issued under this part have been credited.

(g) "Bonds or notes" means the bonds, notes, commercial paper, other obligations of indebtedness, or any combination of these, issued by the finance authority pursuant to this part.

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(h) "Bulk transfer" means a transfer of refined petroleum or a refined petroleum product from, or purchase for resale by, a refiner, pipeline terminal operator, supplier, or marine terminal operator to or from another refiner, pipeline terminal operator, supplier, or marine terminal operator through pipeline tender or marine delivery, including pipeline movements of refined petroleum or a refined petroleum product from 1 or more marine vessel movements of refined petroleum or a refined petroleum product. Refined petroleum or a refined petroleum product in a refinery, pipeline, terminal, or marine vessel transporting refined petroleum or a refined petroleum product to a refinery or terminal is in the bulk transfer terminal system. Notwithstanding anything to the contrary in this subdivision, refined petroleum or a refined petroleum product transferred or purchased for resale by a refiner, pipeline terminal operator, supplier, or marine terminal operator must be delivered to or otherwise remain within the bulk transfer terminal system prior to removal across the rack in order to constitute a bulk transfer.

(i) "Bulk transfer terminal system" means the refined petroleum or refined petroleum product distribution system consisting of refineries, pipelines, marine vessels, and terminals and includes refined petroleum or refined petroleum product storage tanks and refined petroleum or refined petroleum product storage facilities that are part of a refinery, boat terminal transfer, or terminal owned, operated, or controlled by a refiner, marine terminal operator, or pipeline terminal operator.

(j) "Claim" means the submission by the owner or operator or his or her representative of documentation on an application requesting payment by the authority. A claim shall include, at a minimum, a completed and signed claim form and the name, address, telephone number, and federal tax identification number of the owner or operator.

(k) "Claim limit" means $1,000,000.00 for all claims of owners or operators and their affiliates during a claim period for owners and operators of 1 to 100 refined petroleum underground storage tanks or $2,000,000.00 for all claims of owners or operators and their affiliates during a claim period for owners or operators of more than 100 refined petroleum underground storage tanks.

(*l*) "Claim period" means a 1-year period commencing on October 1 of each year and ending on September 30 the following year.

(m) "Controls" means the possession or the contingent or noncontingent right to acquire possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities or interests, by contract, other than a commercial contract for goods or nonmanagement services, by pledge of securities, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(n) "Corrective action" means that term as it is defined in section 21302.

(o) "Deductible amount" means the amount of corrective action costs or indemnification costs that are required to be paid by an owner or operator as provided in section 21510a before the owner or operator is eligible to submit a claim under this part.

(p) "Department" means the department of environmental quality.

(q) "Eligible person" means an owner or operator who meets the eligibility requirements under this part to submit a claim.

(r) "Excluded liquid" means that term as defined in 26 CFR 48.4081-1.

(s) "Finance authority" means the Michigan finance authority created by Executive Reorganization Order No. 2010-2, MCL 12.194.

(t) "Financial responsibility requirements" means the financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by a release from a refined petroleum underground storage tank system that the owner or operator of a refined petroleum underground storage tank system must demonstrate under part 211 and the rules promulgated under that part.

(u) "Fund" means the underground storage tank cleanup fund created in section 21506b and includes the bond proceeds account established within the fund.

(v) "Indemnification" means indemnification of an owner or operator for a legally enforceable judgment entered against the owner or operator by a third party, or a legally enforceable settlement entered between the owner or operator and a third party, compensating that third party for bodily injury or property damage, or both, caused by an accidental release as those terms are defined in R 29.2163 of the Michigan administrative code.

(w) "Location" means a parcel of property where refined petroleum underground storage tank systems are registered pursuant to part 211.

(x) "Marine terminal operator" means a person that stores refined petroleum or a refined petroleum product at a boat terminal transfer.

(y) "Operator" means that term as it is defined in section 21303 or a person to whom an approved claim has been assigned or transferred.

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(z) "Owner" means that term as it is defined in section 21303.

(aa) "Oxygenate" means an organic compound containing oxygen and having properties as a fuel that are compatible with petroleum, including, but not limited to, ethanol, methanol, or methyl tertiary butyl ether (MTBE).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2006, Act 318, Imd. Eff. July 20, 2006;—Am. 2012, Act 113, Imd. Eff. May 1, 2012;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

****** 324.21502.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 22, 2017 ******

324.21502.amended Definitions; A to O.

Sec. 21502. As used in this part:

(a) "Administrator" means the administrator of the authority as provided for in section 21525.

(b) "Affiliate" means a person that directly, or indirectly through 1 or more intermediaries, controls the person specified.

(c) "Approved claim" means a claim that is approved pursuant to section 21510.

(d) "Authority" means the underground storage tank authority created in section 21523.

(e) "Board of directors" or "board" means the board of directors of the authority.

(f) "Bond proceeds account" means the account within the fund to which proceeds of bonds or notes issued under this part have been credited.

(g) "Bonds or notes" means the bonds, notes, commercial paper, other obligations of indebtedness, or any combination of these, issued by the finance authority pursuant to this part.

(h) "Bulk transfer" means a transfer of refined petroleum or a refined petroleum product from, or purchase for resale by, a refiner, pipeline terminal operator, supplier, or marine terminal operator to or from another refiner, pipeline terminal operator, supplier, or marine terminal operator through pipeline tender or marine delivery, including pipeline movements of refined petroleum or a refined petroleum product from 1 or more marine vessel movements of refined petroleum or a refined petroleum product. Refined petroleum or a refined petroleum product in a refinery, pipeline, terminal, or marine vessel transporting refined petroleum or a refined petroleum product to a refinery or terminal is in the bulk transfer terminal system. Notwithstanding anything to the contrary in this subdivision, refined petroleum or a refined petroleum product transferred or purchased for resale by a refiner, pipeline terminal operator, supplier, or marine terminal operator must be delivered to or otherwise remain within the bulk transfer terminal system prior to removal across the rack in order to constitute a bulk transfer.

(i) "Bulk transfer terminal system" means the refined petroleum or refined petroleum product distribution system consisting of refineries, pipelines, marine vessels, and terminals and includes refined petroleum or refined petroleum product storage tanks and refined petroleum or refined petroleum product storage facilities that are part of a refinery, boat terminal transfer, or terminal owned, operated, or controlled by a refiner, marine terminal operator, or pipeline terminal operator.

(j) "Claim" means the submission by the owner or operator or his or her representative of documentation on an application requesting payment by the authority. A claim shall include, at a minimum, a completed and signed claim form and the name, address, and telephone number of the owner or operator.

(k) "Claims limit" means $1,000,000.00 per release. Two or more claims arising out of the same, interrelated, associated, repeated, or continuous releases or a series of related releases shall be subject to 1 claims limit. Any claim that takes place over 2 or more claim periods shall be subject to 1 claims limit.

(*l*) "Claim period" means a 1-year period commencing on October 1 of each year and ending on September 30 the following year.

(m) "Claim period aggregate limit" means the following aggregate claims limit for all releases discovered during a claim period:

(*i*) For owners, operators, and affiliates of 1 to 100 refined petroleum underground storage tanks, $1,000,000.00.

(*ii*) For owners, operators, and affiliates of more than 100 refined petroleum underground storage tanks, $2,000,000.00.

(n) "Controls" means the possession or the contingent or noncontingent right to acquire possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities or interests, by contract, other than a commercial contract for goods or nonmanagement services, by pledge of securities, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

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(o) "Corrective action" means that term as it is defined in section 21302.

(p) "Deductible amount" means the amount of corrective action costs or indemnification costs that are required to be paid by an owner or operator as provided in section 21510a.

(q) "Department" means the department of environmental quality.

(r) "Eligible person" means an owner or operator who meets the eligibility requirements under this part to submit a claim.

(s) "Excluded liquid" means that term as defined in 26 CFR 48.4081-1.

(t) "Finance authority" means the Michigan finance authority created by Executive Reorganization Order No. 2010-2, MCL 12.194.

(u) "Financial responsibility requirements" means the financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by a release from a refined petroleum underground storage tank system that the owner or operator of a refined petroleum underground storage tank system must demonstrate under part 211 and the rules promulgated under that part.

(v) "Fund" means the underground storage tank cleanup fund created in section 21506b and includes the bond proceeds account established within the fund.

(w) "Indemnification" means indemnification of an owner or operator for a legally enforceable judgment entered against the owner or operator by a third party, or a legally enforceable settlement entered between the owner or operator and a third party, compensating that third party for bodily injury or property damage, or both, caused by an accidental release as those terms are defined in R 29.2163 of the Michigan Administrative Code.

(x) "Location" means a parcel of property where refined petroleum underground storage tank systems are registered pursuant to part 211.

(y) "Marine terminal operator" means a person that stores refined petroleum or a refined petroleum product at a boat terminal transfer.

(z) "Operator" means that term as it is defined in section 21303 or a person to whom an approved claim has been assigned or transferred.

(aa) "Owner" means that term as it is defined in section 21303.

(bb) "Oxygenate" means an organic compound containing oxygen and having properties as a fuel that are compatible with petroleum, including, but not limited to, ethanol, methanol, or methyl tertiary butyl ether (MTBE).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2006, Act 318, Imd. Eff. July 20, 2006;—Am. 2012, Act 113, Imd. Eff. May 1, 2012;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

Popular name: Act 451

Popular name: NREPA

****** 324.21503 THIS SECTION IS AMENDED EFFECTIVE MARCH 22, 2017: See 324.21503.amended ******

324.21503 Definitions; P to U.

Sec. 21503. As used in this part:

(a) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(b) "Pipeline terminal operator" means a person that receives and stores refined petroleum or a refined petroleum product in tanks and other equipment used in receiving and storing refined petroleum or a refined petroleum product from interstate and intrastate pipelines, pending wholesale bulk reshipment.

(c) "Qualifying expenditures" means an expenditure for a specific activity that does not exceed the allowable payment for that activity as detailed on the schedule of costs.

(d) "Rack" means a mechanism for delivering refined petroleum or a refined petroleum product from a refiner, a pipeline terminal operator, or a marine terminal operator into a railroad tank car, a transport truck, a tank wagon, or the fuel supply tank of a marine vessel.

(e) "Refined petroleum" means aviation gasoline, middle distillates, jet fuel, kerosene, gasoline, residual oils, and any oxygenates that have been blended with any of these. Refined petroleum includes refined petroleum products and transmix. Refined petroleum does not include excluded liquids.

(f) "Refined petroleum fund" means the refined petroleum fund established under section 21506a.

(g) "Refined petroleum underground storage tank" means an underground storage tank system used for the storage of refined petroleum.

(h) "Refiner" means a person that meets both of the following:

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(*i*) Manufactures or produces refined petroleum or a refined petroleum product at a refinery.

(*ii*) Is a taxable fuel registrant that is a refiner for purposes of 26 CFR 48.4081-1.

(i) "Refinery" means a facility used by a refiner to produce refined petroleum or a refined petroleum product from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons by any process involving substantially more than the blending of refined petroleum and from which refined petroleum or a refined petroleum product may be removed by pipeline or marine vessel or at a rack.

(j) "Regulated financial institution" means a state or nationally chartered bank, savings and loan association or savings bank, credit union, or other state or federally chartered lending institution or a regulated affiliate or regulated subsidiary of any of these entities.

(k) "Regulatory fee" means the environmental protection regulatory fee imposed under section 21508.

(*l*) "Release" means that term as it is defined in section 21303.

(m) "Removal" or "removed" means a physical transfer other than by evaporation, loss, or destruction of refined petroleum or a refined petroleum product from a refiner, pipeline terminal operator, or marine terminal operator.

(n) "Schedule of costs" means the list of allowable reimbursement amounts that may be paid on a claim, as established in section 21510b.

(o) "Site" means that term as it is defined in section 21303.

(p) "Supplier" means a supplier or permissive supplier licensed under the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170.

(q) "Tank wagon" means a straight truck having 1 or more compartments other than the fuel supply tank designed or used to carry fuel.

(r) "Terminal" means a refined petroleum or refined petroleum products storage and distribution facility that meets all of the following requirements:

(*i*) Is registered as a qualified terminal by the internal revenue service.

(*ii*) Is supplied by a pipeline or a marine vessel.

(*iii*) Has a rack from which refined petroleum or refined petroleum products may be removed.

(s) "Transmix" means the mixed product that results from the buffer or interface of 2 different products in a pipeline shipment, or a mixture of 2 different products within a refinery or terminal that results in an off-grade mixture.

(t) "Transport truck" means a semitrailer combination rig designed or used for the purpose of transporting refined petroleum or a refined petroleum product over the public roads or highways.

(u) "Two-party exchange" means a transaction, including a book transfer, in which refined petroleum or a refined petroleum product is transferred from 1 supplier to another supplier and to which all of the following apply:

(*i*) The transaction includes a transfer of refined petroleum or a refined petroleum product from the person that holds the original inventory position for the refined petroleum or refined petroleum product in storage tanks as reflected in the records of the refiner, pipeline terminal operator, or marine terminal operator.

(*ii*) The exchange transaction is completed before removal across the rack by the receiving supplier.

(*iii*) The refiner, pipeline terminal operator, or marine terminal operator in its books and records treats the receiving exchange party as the supplier that removes the refined petroleum or refined petroleum product across a rack for purposes of reporting the transaction to the department under the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170.

(v) "Underground storage tank system" means that term as it is defined in section 21303.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 181, Imd. Eff. May 3, 1996;—Am. 2006, Act 318, Imd. Eff. July 20, 2006;—Am. 2012, Act 113, Imd. Eff. May 1, 2012;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

***** *324.21503.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 22, 2017* *****

324.21503.amended Definitions; P to W.

Sec. 21503. As used in this part:

(a) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(b) "Pipeline terminal operator" means a person that receives and stores refined petroleum or a refined petroleum product in tanks and other equipment used in receiving and storing refined petroleum or a refined petroleum product from interstate and intrastate pipelines, pending wholesale bulk reshipment.

(c) "Qualifying expenditures" means an expenditure for a specific activity that does not exceed the

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allowable payment for that activity as detailed on the schedule of costs.

(d) "Rack" means a mechanism for delivering refined petroleum or a refined petroleum product from a refiner, a pipeline terminal operator, or a marine terminal operator into a railroad tank car, a transport truck, a tank wagon, or the fuel supply tank of a marine vessel.

(e) "Refined petroleum" means aviation gasoline, middle distillates, jet fuel, kerosene, gasoline, residual oils, and any oxygenates that have been blended with any of these. Refined petroleum includes refined petroleum products and transmix. Refined petroleum does not include excluded liquids.

(f) "Refined petroleum fund" means the refined petroleum fund established under section 21506a.

(g) "Refined petroleum underground storage tank" means an underground storage tank system used for the storage of refined petroleum.

(h) "Refiner" means a person that meets both of the following:

(*i*) Manufactures or produces refined petroleum or a refined petroleum product at a refinery.

(*ii*) Is a taxable fuel registrant that is a refiner for purposes of 26 CFR 48.4081-1.

(i) "Refinery" means a facility used by a refiner to produce refined petroleum or a refined petroleum product from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons by any process involving substantially more than the blending of refined petroleum and from which refined petroleum or a refined petroleum product may be removed by pipeline or marine vessel or at a rack.

(j) "Regulated financial institution" means a state or nationally chartered bank, savings and loan association or savings bank, credit union, or other state or federally chartered lending institution or a regulated affiliate or regulated subsidiary of any of these entities.

(k) "Regulatory fee" means the environmental protection regulatory fee imposed under section 21508.

(*l*) "Release" means that term as it is defined in section 21303.

(m) "Removal" or "removed" means a physical transfer other than by evaporation, loss, or destruction of refined petroleum or a refined petroleum product from a refiner, pipeline terminal operator, or marine terminal operator.

(n) "Schedule of costs" means the list of allowable reimbursement amounts that may be paid on a claim, as established in section 21510b.

(o) "Site" means that term as it is defined in section 21303.

(p) "Supplier" means a supplier or permissive supplier licensed under the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170.

(q) "Tank wagon" means a straight truck having 1 or more compartments other than the fuel supply tank designed or used to carry fuel.

(r) "Terminal" means a refined petroleum or refined petroleum products storage and distribution facility that meets all of the following requirements:

(*i*) Is registered as a qualified terminal by the internal revenue service.

(*ii*) Is supplied by a pipeline or a marine vessel.

(*iii*) Has a rack from which refined petroleum or refined petroleum products may be removed.

(s) "Transmix" means the mixed product that results from the buffer or interface of 2 different products in a pipeline shipment, or a mixture of 2 different products within a refinery or terminal that results in an off-grade mixture.

(t) "Transport truck" means a semitrailer combination rig designed or used for the purpose of transporting refined petroleum or a refined petroleum product over the public roads or highways.

(u) "Two-party exchange" means a transaction, including a book transfer, in which refined petroleum or a refined petroleum product is transferred from 1 supplier to another supplier and to which all of the following apply:

(*i*) The transaction includes a transfer of refined petroleum or a refined petroleum product from the person that holds the original inventory position for the refined petroleum or refined petroleum product in storage tanks as reflected in the records of the refiner, pipeline terminal operator, or marine terminal operator.

(*ii*) The exchange transaction is completed before removal across the rack by the receiving supplier.

(*iii*) The refiner, pipeline terminal operator, or marine terminal operator in its books and records treats the receiving exchange party as the supplier that removes the refined petroleum or refined petroleum product across a rack for purposes of reporting the transaction to the department under the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170.

(v) "Underground storage tank system" means that term as it is defined in section 21303.

(w) "Work invoice" means a list of goods or services for costs of corrective action related to a claim, including a statement of the amount due.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 181, Imd. Eff. May 3, 1996;—Am. 2006, Act 318, Imd. Eff. July 20,

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2006;—Am. 2012, Act 113, Imd. Eff. May 1, 2012;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

Popular name: Act 451

Popular name: NREPA

324.21504 Objectives of part.

Sec. 21504. The objectives of this part are to fund corrective actions to address releases from refined petroleum underground storage tank systems, to assist owners and operators of refined petroleum underground storage tank systems in meeting their financial responsibility requirements pursuant to part 211, and to achieve compliance with part 213.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.21505 Legislative findings.

Sec. 21505. The legislature finds that releases from underground storage tanks are a significant cause of contamination of the natural resources, water resources, and groundwater in this state. The purpose of this part and of the authority created by this part is to preserve and protect the water resources of the state and to prevent, abate, or control the pollution of water resources and groundwater, to protect and preserve the public health, safety, and welfare, and to assist in the financing of corrective actions due to releases from refined petroleum underground storage tank systems.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.21506 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to Michigan underground storage tank financial assurance fund.

****** 324.21506a THIS SECTION IS AMENDED EFFECTIVE MARCH 29, 2017: See 324.21506a.amended ******

324.21506a Refined petroleum fund; creation; deposit of money or other assets; investment; money remaining at close of fiscal year; expenditures; purposes.

Sec. 21506a. (1) The refined petroleum fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the refined petroleum fund. The state treasurer shall direct the investment of the refined petroleum fund. The state treasurer shall credit to the refined petroleum fund interest and earnings from refined petroleum fund investments.

(3) Money in the refined petroleum fund at the close of the fiscal year shall remain in the refined petroleum fund and shall not lapse to the general fund.

(4) Money from the refined petroleum fund shall be expended, upon appropriation, only for 1 or more of the following purposes:

(a) Corrective actions performed by the department pursuant to section 21320.

(b) The reasonable costs of the department in administering the refined petroleum fund and implementing part 213.

(c) Until December 31, 2016, for gasoline inspection programs under both of the following:

(*i*) The weights and measures act, 1964 PA 283, MCL 290.601 to 290.635.

(*ii*) The motor fuels quality act, 1984 PA 44, MCL 290.641 to 290.650d.

(d) Other purposes as determined by the legislature.

History: Add. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2006, Act 318, Imd. Eff. July 20, 2006;—Am. 2007, Act 67, Imd. Eff. Sept. 28, 2007;—Am. 2012, Act 113, Imd. Eff. May 1, 2012;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: Enacting section 1 of Act 390 of 2004 provides:

"Enacting section 1. The provisions of this amendatory act relating to the extension and collection of the regulatory fee provided for under this part and the obligation to pay the fee shall be applied retroactively. The requirement to impose and collect the regulatory fee and the obligation to pay the fee shall not be considered to have ceased at any time since the date the requirement and obligation were originally enacted into law. The requirement that this enacting section be applied retroactively extends to any regulatory fee imposed or collected even if it is alleged or determined that sufficient regulatory fees were collected to pay in full bonds or notes issued by the Michigan underground storage tank financial assurance authority.

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Popular name: Act 451

Popular name: NREPA

****** 324.21506a.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 29, 2017 ******

324.21506a.amended Refined petroleum fund; creation; deposit of money or other assets; investment; money remaining at close of fiscal year; expenditures; purposes.

Sec. 21506a. (1) The refined petroleum fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the refined petroleum fund. The state treasurer shall direct the investment of the refined petroleum fund. The state treasurer shall credit to the refined petroleum fund interest and earnings from refined petroleum fund investments.

(3) Money in the refined petroleum fund at the close of the fiscal year shall remain in the refined petroleum fund and shall not lapse to the general fund.

(4) Money from the refined petroleum fund shall be expended, upon appropriation, only for 1 or more of the following purposes:

(a) Corrective actions performed by the department pursuant to section 21320.

(b) The reasonable costs of the department in administering the refined petroleum fund and implementing part 213.

(c) Not more than $5,000,000.00 annually for petroleum product inspection programs under both of the following:

(*i*) The weights and measures act, 1964 PA 283, MCL 290.601 to 290.635.

(*ii*) The motor fuels quality act, 1984 PA 44, MCL 290.641 to 290.650d.

(d) Not more than $3,000,000.00 annually for the bureau of fire services and office of the state fire marshal, storage tank division, in the department of licensing and regulatory affairs.

(e) Other purposes as determined by the legislature.

History: Add. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2006, Act 318, Imd. Eff. July 20, 2006;—Am. 2007, Act 67, Imd. Eff. Sept. 28, 2007;—Am. 2012, Act 113, Imd. Eff. May 1, 2012;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 467, Eff. Mar. 29, 2017.

Compiler's note: Enacting section 1 of Act 390 of 2004 provides:

"Enacting section 1. The provisions of this amendatory act relating to the extension and collection of the regulatory fee provided for under this part and the obligation to pay the fee shall be applied retroactively. The requirement to impose and collect the regulatory fee and the obligation to pay the fee shall not be considered to have ceased at any time since the date the requirement and obligation were originally enacted into law. The requirement that this enacting section be applied retroactively extends to any regulatory fee imposed or collected even if it is alleged or determined that sufficient regulatory fees were collected to pay in full bonds or notes issued by the Michigan underground storage tank financial assurance authority.

Popular name: Act 451

Popular name: NREPA

324.21506b Underground storage tank cleanup fund; creation; bond proceeds account; receipt of money or other assets; investment; money remaining at close of fiscal year; authority as administrator; expenditures.

Sec. 21506b. (1) The underground storage tank cleanup fund is created within the state treasury. The state treasurer shall establish a bond proceeds account within the fund and may establish procedures for accounting for deposits and expenditures from the bond proceeds account.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The authority shall be the administrator of the fund for auditing purposes.

(5) The authority and the finance authority shall expend money from the fund, upon appropriation, only for the following purposes:

(a) As a first priority, to pay principal and interest due on bonds or notes issued by the finance authority pursuant to this part, plus any amount necessary to maintain a fully funded debt reserve or other reserve intended to secure the principal and interest on the bonds or notes as may be required by resolution, indenture, or other agreement of the finance authority.

(b) For the reasonable administrative cost of implementing this part incurred by the department, the department of treasury, the department of attorney general, and the finance authority. Administrative costs

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include the actual and necessary expenses incurred by the finance authority and its members in carrying out the duties imposed by this part. Total administrative costs expended under this subdivision shall not exceed 7% of the fund's projected revenues in any year. Costs incurred by the finance authority for the issuance of bonds or notes which may also be payable from the proceeds of the bonds or notes shall not be considered administrative costs.

(c) To pay approved claims as provided for in this part.

History: Add. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.21507 Repealed. 1995, Act 252, Eff. Dec. 22, 1998.

Compiler's note: The repealed section pertained to creation, investment, and disposition of the emergency response fund.

Popular name: Act 451

Popular name: NREPA

****** 324.21508 THIS SECTION IS AMENDED EFFECTIVE MARCH 22, 2017: See 324.21508.amended ******

****** 324.21508 THIS SECTION IS AMENDED EFFECTIVE MARCH 29, 2017: See 324.21508[2].amended ******

324.21508 Environmental protection regulatory fee; imposition; precollection; collection; exemption; deposit of fees; audit, enforcement, collection, and assessment of fees by department of treasury.

Sec. 21508. (1) An environmental protection regulatory fee is imposed on all refined petroleum products sold for resale in this state or consumption in this state. The regulatory fee shall be charged for capacity utilization of refined petroleum underground storage tanks measured on a per gallon basis. The regulatory fee shall be charged against all refined petroleum products sold for resale in this state or consumption in this state so as to not exclude any products that may be stored in a refined petroleum underground tank at any point after the petroleum is refined. The regulatory fee shall be 7/8 cent per gallon for each gallon of refined petroleum sold for resale in this state or consumption in this state, with the per gallon charge being a direct measure of capacity utilization of a refined underground storage tank system. Beginning January 1, 2015, the regulatory fee shall not be imposed on a bulk transfer of or a 2-party exchange involving refined petroleum or refined petroleum products.

(2) The department of treasury shall precollect regulatory fees from persons who refine petroleum in this state for resale in this state or consumption in this state and persons who import refined petroleum into this state for resale in this state or consumption in this state. The department of treasury shall collect regulatory fees that can be collected at the same time as the sales tax under section 6a of the general sales tax act, 1933 PA 167, MCL 205.56a. The remainder of the regulatory fees shall be collected in the manner determined by the state treasurer.

(3) A public utility with more than 500,000 customers in this state is exempt from any fee or assessment imposed under this part if that fee or assessment is imposed on petroleum used by that public utility for the generation of steam or electricity.

(4) Beginning on the effective date of the 2014 amendatory act that amended this section, all regulatory fees collected pursuant to this part during each state fiscal year shall be deposited as follows:

(a) The first $20,000,000.00 that is collected shall be deposited into the fund.

(b) Following the deposit under subdivision (a), all money collected shall be deposited into the refined petroleum fund.

(5) The department of treasury may audit, enforce, collect, and assess the fee imposed by this part in the same manner and subject to the same requirements as revenues collected pursuant to 1941 PA 122, MCL 205.1 to 205.31.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 269, Imd. Eff. Jan. 8, 1996;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: Enacting section 1 of Act 390 of 2004 provides:

"Enacting section 1. The provisions of this amendatory act relating to the extension and collection of the regulatory fee provided for under this part and the obligation to pay the fee shall be applied retroactively. The requirement to impose and collect the regulatory fee and the obligation to pay the fee shall not be considered to have ceased at any time since the date the requirement and obligation were originally enacted into law. The requirement that this enacting section be applied retroactively extends to any regulatory fee imposed or collected even if it is alleged or determined that sufficient regulatory fees were collected to pay in full bonds or notes issued by the Michigan underground storage tank financial assurance authority.

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Subsection 2 of MCL 324.21550, as amended by 2012 PA 113, and which repeals this section, provides:
"(2) The authority's obligation to pay off any bonds or notes issued pursuant to this part shall survive the repeal of section 21508."

Popular name: Act 451

Popular name: NREPA

****** 324.21508.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 22, 2017 ******

324.21508.amended Environmental protection regulatory fee; imposition; precollection; manner of collection; exemption; deposit of fees; audit, enforcement, collection, and assessment of fee by department of treasury.

Sec. 21508. (1) An environmental protection regulatory fee is imposed on all refined petroleum products sold for resale in this state or consumption in this state. The regulatory fee shall be charged for capacity utilization of refined petroleum underground storage tanks measured on a per gallon basis. The regulatory fee shall be charged against all refined petroleum products sold for resale in this state or consumption in this state so as to not exclude any products that may be stored in a refined petroleum underground tank at any point after the petroleum is refined. The regulatory fee shall be 7/8 cent per gallon for each gallon of refined petroleum sold for resale in this state or consumption in this state, with the per gallon charge being a direct measure of capacity utilization of a refined underground storage tank system. The regulatory fee shall not be imposed on a bulk transfer of or a 2-party exchange involving refined petroleum or refined petroleum products.

(2) The department of treasury shall precollect regulatory fees from persons who refine petroleum in this state for resale in this state or consumption in this state and persons who import refined petroleum into this state for resale in this state or consumption in this state. The regulatory fees shall be collected in the manner determined by the state treasurer.

(3) A public utility with more than 500,000 customers in this state is exempt from any fee or assessment imposed under this part if that fee or assessment is imposed on petroleum used by that public utility for the generation of steam or electricity.

(4) All regulatory fees collected pursuant to this part during each state fiscal year shall be deposited as follows:

(a) The first $20,000,000.00 that is collected shall be deposited into the fund.

(b) Following the deposit under subdivision (a), all money collected shall be deposited into the refined petroleum fund.

(5) The department of treasury may audit, enforce, collect, and assess the fee imposed by this part in the same manner and subject to the same requirements as revenues collected pursuant to 1941 PA 122, MCL 205.1 to 205.31.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 269, Imd. Eff. Jan. 8, 1996;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

Compiler's note: Enacting section 1 of Act 390 of 2004 provides:
"Enacting section 1. The provisions of this amendatory act relating to the extension and collection of the regulatory fee provided for under this part and the obligation to pay the fee shall be applied retroactively. The requirement to impose and collect the regulatory fee and the obligation to pay the fee shall not be considered to have ceased at any time since the date the requirement and obligation were originally enacted into law. The requirement that this enacting section be applied retroactively extends to any regulatory fee imposed or collected even if it is alleged or determined that sufficient regulatory fees were collected to pay in full bonds or notes issued by the Michigan underground storage tank financial assurance authority.
Subsection 2 of MCL 324.21550, as amended by 2012 PA 113, and which repeals this section, provides:
"(2) The authority's obligation to pay off any bonds or notes issued pursuant to this part shall survive the repeal of section 21508."

Popular name: Act 451

Popular name: NREPA

****** 324.21508.amended[2] THIS AMENDED SECTION IS EFFECTIVE MARCH 29, 2017 ******

324.21508.amended[2] Environmental protection regulatory fee; imposition; precollection; collection; exemption; deposit of fees; audit, enforcement, collection, and assessment of fees by department of treasury.

Sec. 21508. (1) An environmental protection regulatory fee is imposed on all refined petroleum products sold for resale in this state or consumption in this state. The regulatory fee shall be charged for capacity utilization of refined petroleum underground storage tanks measured on a per gallon basis. The regulatory fee shall be charged against all refined petroleum products sold for resale in this state or consumption in this state so as to not exclude any products that may be stored in a refined petroleum underground storage tank at any point after the petroleum is refined. The regulatory fee shall be 1 cent per gallon for each gallon of refined

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petroleum sold for resale in this state or consumption in this state, with the per gallon charge being a direct measure of capacity utilization of a refined petroleum underground storage tank system. The regulatory fee shall not be imposed on a bulk transfer of or a 2-party exchange involving refined petroleum or refined petroleum products.

(2) The department of treasury shall precollect regulatory fees from persons who refine petroleum in this state for resale in this state or consumption in this state and persons who import refined petroleum into this state for resale in this state or consumption in this state. The department of treasury shall collect regulatory fees that can be collected at the same time as the sales tax under section 6a of the general sales tax act, 1933 PA 167, MCL 205.56a. The remainder of the regulatory fees shall be collected in the manner determined by the state treasurer.

(3) A public utility with more than 500,000 customers in this state is exempt from any fee or assessment imposed under this part if that fee or assessment is imposed on petroleum used by that public utility for the generation of steam or electricity.

(4) All regulatory fees collected pursuant to this part during each state fiscal year shall be deposited as follows:

(a) The first $20,000,000.00 that is collected shall be deposited into the fund.

(b) Following the deposit under subdivision (a), all money collected shall be deposited into the refined petroleum fund.

(5) The department of treasury may audit, enforce, collect, and assess the fee imposed by this part in the same manner and subject to the same requirements as revenues collected pursuant to 1941 PA 122, MCL 205.1 to 205.31.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 269, Imd. Eff. Jan. 8, 1996;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017;—Am. 2016, Act 467, Eff. Mar. 29, 2017.

Compiler's note: Enacting section 1 of Act 390 of 2004 provides:

"Enacting section 1. The provisions of this amendatory act relating to the extension and collection of the regulatory fee provided for under this part and the obligation to pay the fee shall be applied retroactively. The requirement to impose and collect the regulatory fee and the obligation to pay the fee shall not be considered to have ceased at any time since the date the requirement and obligation were originally enacted into law. The requirement that this enacting section be applied retroactively extends to any regulatory fee imposed or collected even if it is alleged or determined that sufficient regulatory fees were collected to pay in full bonds or notes issued by the Michigan underground storage tank financial assurance authority.

Subsection 2 of MCL 324.21550, as amended by 2012 PA 113, and which repeals this section, provides:

"(2) The authority's obligation to pay off any bonds or notes issued pursuant to this part shall survive the repeal of section 21508."

Popular name: Act 451

Popular name: NREPA

324.21509 Calculation and payment of regulatory fees; collection of regulatory fees under product exchange agreement; definition.

Sec. 21509. (1) Notwithstanding any other provision in this part, regulatory fees shall be calculated and paid upon gross or metered gallons with respect to all "light" petroleum products. With respect only to "heavy" petroleum products (No. 4, No. 5, No. 6 residual oils), regulatory fees shall be calculated and paid upon net or temperature-corrected gallons.

(2) Notwithstanding any other provision in this part, until January 1, 2015, if a person receives refined petroleum products in this state for resale in this state or consumption in this state pursuant to a product exchange agreement, the department of treasury shall collect the regulatory fees from that person. As used in this subsection, "product exchange agreement" means an agreement between buyers and sellers of refined petroleum products in which refined petroleum products in bulk quantity are made available to a person solely in consideration of that person making available a like volume of refined petroleum products to the other party at some other location.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

****** 324.21510 THIS SECTION IS AMENDED EFFECTIVE MARCH 22, 2017: See 324.21510.amended ******

324.21510 Eligibility of owner or operator to receive money from authority for corrective action or indemnification.

Sec. 21510. (1) An owner or operator is eligible to receive money from the authority for corrective action or indemnification due to a release from a refined petroleum underground storage tank system only if all of

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the following requirements are satisfied and the owner or operator otherwise complies with this part:

(a) The release from which the corrective action or indemnification arose was discovered and reported on or after the effective date of the 2014 amendatory act that amended this section.

(b) The refined petroleum underground storage tank from which the release occurred was, at the time of discovery of the release, and is presently, in compliance with the registration and fee requirements of part 211 and the rules promulgated under that part.

(c) The owner or operator reported the release within 24 hours after its discovery as required by part 211 and the rules promulgated under that part.

(d) The owner or operator is not the United States government.

(e) The claim is not for a release from a refined petroleum underground storage tank closed prior to January 1, 1974, in compliance with the fire prevention code, 1941 PA 207, MCL 29.1 to 29.33, and the rules promulgated under that act.

(f) The owner or operator has maintained financial responsibility requirements for the deductible amount.

(g) The owner or operator has paid the deductible amount.

(h) The owner or operator is otherwise eligible to receive money from the authority under this part.

(i) The total amount of expenditures, including the deductible amount, does not exceed the claim limit.

(2) The owner or operator may receive money from the authority for corrective action or indemnification due to a release that originates from an aboveground piping and dispensing portion of a refined petroleum underground storage tank system if all of the following requirements are satisfied:

(a) The owner or operator is otherwise in compliance with this part and the rules promulgated under this part.

(b) The release is sudden and immediate.

(c) The release is of a quantity exceeding 25 gallons and is released into groundwater, surface water, or soils.

(d) The owner or operator reported the release to the department within 24 hours after its discovery.

(3) Either the owner or the operator may receive money from the authority under this part for an occurrence, but not both.

(4) An owner or operator that is a public utility with more than 500,000 customers in this state is ineligible to receive money from the authority for corrective action or indemnification associated with a release from a refined petroleum underground storage tank system used to supply refined petroleum for the generation of steam electricity.

(5) If an owner or operator has received money from the authority under this part for a release at a location, the owner and operator are not eligible to receive money from the authority for a subsequent release at the same location unless the owner or operator has done either or both of the following:

(a) Discovered the subsequent release pursuant to corrective action being taken on a confirmed release and included this subsequent release as part of the corrective action for the confirmed release.

(b) Upgraded, replaced, removed, or properly closed in place all refined petroleum underground storage tank systems at the location of the release so as to meet the requirements of part 211 and the rules promulgated under that part.

(6) An owner or operator who discovers a subsequent release at the same location as an initial release pursuant to subsection (5)(a) may receive money from the authority to perform corrective action on the subsequent release, if the owner or operator otherwise complies with the requirements of this part and the rules promulgated under this part. However, the subsequent release shall be considered as part of the claim for the initial release for purposes of determining the total amount of expenditures for corrective action and indemnification under subsection (1)(i).

(7) An owner or operator who discovers a subsequent release at the same location as an initial release following compliance with subsection (5)(b) may receive money from the authority to perform corrective action on the subsequent release, if there have been not more than 2 releases at the location, and if the owner or operator otherwise complies with the requirements of this part and the rules promulgated under this part. The subsequent release shall be considered a separate claim for purposes of determining the total amount of expenditures for corrective action and indemnification under subsection (1)(i).

(8) An owner or operator may submit to the authority a request for a determination that the owner or operator would be eligible for funding under this part in the event of a release from a refined petroleum underground storage tank system. Upon receipt of a request under this subsection, the authority shall make a determination and provide notice of that determination, in writing, to the owner or operator. The notice may contain conditions for maintenance of that eligibility.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 12, Imd. Eff. Mar. 31, 1995;—Am. 1995, Act 252, Eff. Jan. 8, 1996;—

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Am. 2012, Act 113, Imd. Eff. May 1, 2012;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

****** 324.21510.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 22, 2017 ******

324.21510.amended Eligibility of owner or operator to receive money from authority for corrective action or indemnification.

Sec. 21510. (1) An owner or operator is eligible to receive money from the authority for corrective action or indemnification due to a release from a refined petroleum underground storage tank system only if all of the following requirements are satisfied and the owner or operator otherwise complies with this part:

(a) The release from which the corrective action or indemnification arose was discovered and reported on or after December 30, 2014.

(b) The refined petroleum underground storage tank from which the release occurred was, at the time of discovery of the release, and is presently, in compliance with the registration and fee requirements of part 211.

(c) The owner or operator reported the release within 24 hours after its discovery as required by part 211 and the rules promulgated under that part.

(d) The owner or operator is not the United States government.

(e) The claim is not for a release from a refined petroleum underground storage tank closed prior to January 1, 1974, in compliance with the fire prevention code, 1941 PA 207, MCL 29.1 to 29.33, and the rules promulgated under that act.

(f) The owner or operator was in compliance with the financial responsibility requirements of part 211 and the rules promulgated under that part at the time of the discovery of the release or releases for which the claim is filed.

(g) The owner or operator is otherwise eligible to receive money from the authority under this part.

(h) The total amount of expenditures, including the deductible amount, does not exceed the claims limit or the claim period aggregate limit applicable to the claim.

(2) The owner or operator may receive money from the authority for corrective action or indemnification due to a release that originates from an aboveground piping and dispensing portion of a refined petroleum underground storage tank system if all of the following requirements are satisfied:

(a) The owner or operator is otherwise in compliance with this part and the rules promulgated under this part.

(b) The release is sudden and immediate.

(c) The release is of a quantity exceeding 25 gallons and is released into groundwater, surface water, or soils.

(d) The owner or operator reported the release to the department within 24 hours after its discovery.

(3) Either the owner or the operator may receive money from the authority under this part for an occurrence, but not both.

(4) An owner or operator that is a public utility with more than 500,000 customers in this state is ineligible to receive money from the authority for corrective action or indemnification associated with a release from a refined petroleum underground storage tank system used to supply refined petroleum for the generation of steam electricity.

(5) If an owner or operator has received money from the authority under this part for a release at a location, the owner and operator are not eligible to receive money from the authority for a subsequent release at the same location unless the owner or operator has done either or both of the following:

(a) Discovered the subsequent release pursuant to corrective action being taken on a confirmed release and included this subsequent release as part of the corrective action for the confirmed release.

(b) Upgraded, replaced, removed, or properly closed in place all refined petroleum underground storage tank systems at the location of the release so as to meet the requirements of part 211 and the rules promulgated under that part.

(6) An owner or operator that discovers a subsequent release at the same location as an initial release pursuant to subsection (5)(a) may receive money from the authority to perform corrective action on the subsequent release, if the owner or operator otherwise complies with the requirements of this part and the rules promulgated under this part. However, the subsequent release shall be considered as part of the claim for the initial release for purposes of determining the total amount of expenditures for corrective action and indemnification under subsection (1)(h).

(7) An owner or operator that discovers a subsequent release at the same location as an initial release

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following compliance with subsection (5)(b) may receive money from the authority to perform corrective action on the subsequent release, if there have been not more than 2 releases at the location, and if the owner or operator otherwise complies with the requirements of this part and the rules promulgated under this part. The subsequent release shall be considered a separate claim for purposes of determining the total amount of expenditures for corrective action and indemnification under subsection (1)(h).

(8) An owner or operator that seeks to receive money from the authority for corrective action shall submit to the administrator the cleanup fund claim submittal form created by the authority containing the information required by the administrator to determine compliance with this part. The administrator shall determine whether the claim complies with this part and shall notify the owner or operator. The administrator may consult with the department of licensing and regulatory affairs to make the determination required in this subsection.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 12, Imd. Eff. Mar. 31, 1995;—Am. 1995, Act 252, Eff. Jan. 8, 1996;—Am. 2012, Act 113, Imd. Eff. May 1, 2012;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

Popular name: Act 451

Popular name: NREPA

****** 324.21510a THIS SECTION IS AMENDED EFFECTIVE MARCH 22, 2017: See 324.21510a.amended ******

324.21510a Responsibility of owner or operator for deductible amount.

Sec. 21510a. (1) Prior to submitting a claim under this part, an owner or operator is responsible for a deductible amount as follows:

(a) Subject to subdivision (b), $50,000.00 per claim.

(b) If the owner or operator or its affiliate owns or operates fewer than 8 refined petroleum underground storage tanks and pays the authority an annual fee of $500.00 per refined petroleum underground storage tank, $15,000.00 per claim. For purposes of this subdivision, each compartment of a multiple compartment refined petroleum underground storage tank is considered a refined petroleum underground storage tank for purposes of calculating the annual fee.

(2) The due date for the annual fee paid pursuant to subsection (1)(b) shall be set by the authority.

(3) The deductible amount applies to each claim. However, 2 or more claims arising out of the same, interrelated, associated, repeated, or continuous releases or a series of related releases shall be considered a single claim and be subject to 1 claim limit and 1 deductible amount. Any claim which takes place over 2 or more claim periods shall be subject to 1 claim limit and 1 deductible amount.

(4) An owner or operator that submits a claim under section 21515 shall include work invoices or other evidence that the deductible amount described in subsection (1) has been met. The expenses toward meeting the deductible amount shall be documented and shall comply with the following:

(a) Expenses for items listed in the schedule of costs shall be at or below the allowable reimbursement amount listed in the schedule of costs.

(b) Expenses for items that are not listed in the schedule of costs shall be reasonable and necessary considering conditions at the site based upon a competitive bidding process established by the authority.

History: Add. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

****** 324.21510a.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 22, 2017 ******

324.21510a.amended Responsibility of owner or operator for deductible amount.

Sec. 21510a. (1) An owner or operator is responsible for a deductible amount as follows:

(a) If the owner or operator or its affiliate owns or operates fewer than 8 refined petroleum underground storage tanks, $2,000.00 per claim.

(b) If the owner or operator or its affiliate owns or operates 8 or more refined petroleum underground storage tanks, $10,000.00 per claim.

(c) The deductible amount under subdivisions (a) and (b) is retroactive to all claims filed for releases discovered and reported on or after December 30, 2014.

(2) The deductible amount applies to each claim. However, 2 or more claims arising out of the same, interrelated, associated, repeated, or continuous releases or a series of related releases shall be considered a single claim and are subject to 1 deductible amount. Any claim that takes place over 2 or more claim periods is subject to 1 deductible amount.

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(3) An owner or operator that submits a work invoice under section 21515 is responsible for the deductible amount described in subsection (1). The expenses toward meeting the deductible amount shall be documented and shall comply with the following:

(a) Expenses for items listed in the schedule of costs shall be at or below the allowable reimbursement amount listed in the schedule of costs.

(b) Expenses for items that are not listed in the schedule of costs shall be reasonable and necessary considering conditions at the site based upon a competitive bidding process established by the authority.

History: Add. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

Popular name: Act 451

Popular name: NREPA

324.21510b Itemized corrective actions; schedule of costs.

Sec. 21510b. (1) The authority shall establish a schedule of costs that itemizes corrective actions that are generally conducted at a site and lists an allowable reimbursement amount that may be paid for each corrective action as part of a claim under this part. If the authority determines that costs for particular corrective actions vary in different regions of the state, the authority may establish allowable reimbursement amounts that reflect regional differences.

(2) The authority shall annually review and update the schedule of costs as necessary or appropriate.

(3) The department shall post the schedule of costs and any updates to the schedule of costs on the department's website.

History: Add. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

***** *324.21510c THIS SECTION IS AMENDED EFFECTIVE MARCH 22, 2017: See 324.21510c.amended* *****

324.21510c Approval of claim; prohibitions.

Sec. 21510c. A claim shall not be approved by the authority for any of the following:

(a) A release that was expected or intended by an owner or operator, or an employee of an owner or operator.

(b) Punitive, exemplary, or multiplied damages, fines, taxes, penalties, assessments, punitive or statutory assessments, or any civil, administrative, or criminal fines, sanctions, or penalties.

(c) A claim made by an owner or operator against any other person that is also an owner or operator of the refined petroleum underground storage tank system.

(d) A release caused by, based upon, resulting from, or attributable to the owner's or operator's intentional, knowing, willful, or deliberate noncompliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body.

(e) A release arising from the ownership, maintenance, use, or entrustment to others of any aircraft, auto, rolling stock, or watercraft, including loading and unloading.

(f) Costs, charges, or expenses incurred by the owner or operator for goods supplied by the owner or operator or services performed by the staff or employees of the owner or operator, or its parent, subsidiary, or affiliate, unless the costs, charges, or expenses are incurred with the prior written approval of the authority.

(g) A release arising from any consequence, whether direct or indirect, of war, invasion, act of a foreign enemy, act of terrorists, hostilities, whether war has been declared or not, civil war, rebellion, revolution, insurrection or military or usurped power, strike, riot, or civil commotion.

(h) Costs arising out of the reconstruction, repair, replacement, upgrading of a refined petroleum underground storage tank system, or any other improvements and any site enhancements or routine maintenance on, within, or under a location.

(i) Costs arising out of the removing, replacing, or recycling of the contents of a refined petroleum underground storage tank system.

(j) Costs, charges, or expenses incurred to investigate or verify that a confirmed release has taken place.

(k) Costs related to the injury of an employee of the owner or operator or its parent, subsidiary, or affiliate arising out of and in the course of employment by the owner or operator or its parent, subsidiary, or affiliate or performing duties related to the conduct of the business of the owner or operator or its parent, subsidiary, or affiliate by a spouse, child, parent, brother, or sister of that employee. This subdivision applies whether the owner or operator may be liable as an employer or in any other capacity and to any obligation to share

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damages with or repay someone else who must pay damages because of the injury.

(*l*) Any obligation of the owner or operator under worker's compensation, unemployment compensation, or disability benefits law or similar law.

(m) Any liability or claim for liability of others assumed by the owner or operator under any contract or agreement, unless the owner or operator would have been liable in the absence of the contract or agreement.

(n) A release on, within, under, or emanating from a location if the release commenced subsequent to the time such location was sold, given away, or abandoned.

History: Add. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

****** 324.21510c.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 22, 2017 ******

324.21510c.amended Approval of claim; prohibitions.

Sec. 21510c. A claim shall not be approved by the authority for any of the following:

(a) A release that was expected or intended by an owner or operator, or an employee of an owner or operator.

(b) Punitive, exemplary, or multiplied damages, fines, taxes, penalties, assessments, punitive or statutory assessments, or any civil, administrative, or criminal fines, sanctions, or penalties.

(c) A claim made by an owner or operator against any other person that is also an owner or operator of the refined petroleum underground storage tank system.

(d) A release caused by, based upon, resulting from, or attributable to the owner's or operator's intentional, knowing, willful, or deliberate noncompliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body.

(e) A release arising from the ownership, maintenance, use, or entrustment to others of any aircraft, auto, rolling stock, or watercraft, including loading and unloading.

(f) Costs, charges, or expenses incurred by the owner or operator for goods supplied by the owner or operator or services performed by the staff or employees of the owner or operator, or its parent, subsidiary, or affiliate, unless the costs, charges, or expenses are incurred with the prior written approval of the authority.

(g) A release arising from any consequence, whether direct or indirect, of war, invasion, act of a foreign enemy, act of terrorists, hostilities, whether war has been declared or not, civil war, rebellion, revolution, insurrection or military or usurped power, strike, riot, or civil commotion.

(h) Costs arising out of the reconstruction, repair, replacement, upgrading of a refined petroleum underground storage tank system, or any other improvements and any site enhancements or routine maintenance on, within, or under a location.

(i) Costs arising out of the removing, replacing, or recycling of a refined petroleum underground storage tank system or its contents.

(j) Costs, charges, or expenses incurred to investigate or verify that a confirmed release has taken place.

(k) Costs related to the injury of an employee of the owner or operator or its parent, subsidiary, or affiliate arising out of and in the course of employment by the owner or operator or its parent, subsidiary, or affiliate or performing duties related to the conduct of the business of the owner or operator or its parent, subsidiary, or affiliate by a spouse, child, parent, brother, or sister of that employee. This subdivision applies whether the owner or operator may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

(*l*) Any obligation of the owner or operator under worker's compensation, unemployment compensation, or disability benefits law or similar law.

(m) Any liability or claim for liability of others assumed by the owner or operator under any contract or agreement, unless the owner or operator would have been liable in the absence of the contract or agreement.

(n) A release on, within, under, or emanating from a location if the release commenced subsequent to the time the location was sold, given away, or abandoned.

(o) Costs that have been or will be submitted to or that have been paid pursuant to an insurance policy or policies.

(p) Costs arising from corrective actions performed in excess of the corrective actions required to obtain a restricted closure based on then current land use.

(q) Costs incurred after the closure date of the release or releases for which the claim was filed except for costs for monitoring well abandonment or remediation system decommissioning, or both, performed within 1 year of the closure date.

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History: Add. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

Popular name: Act 451

Popular name: NREPA

****** 324.21510d.added THIS ADDED SECTION IS EFFECTIVE MARCH 22, 2017 ******

324.21510d.added Reliance of owner or operator on fund to meet financial responsibility requirements; submission of request for determination; notice.

Sec. 21510d. If an owner or operator intends to rely on the fund to meet financial responsibility requirements, the owner or operator shall submit to the authority a request for a determination that the owner or operator would be eligible for funding under this part in the event of a release from a refined petroleum underground storage tank system. Upon receipt of a request under this subsection, the authority shall make a determination and provide notice of that determination, in writing, to the owner or operator. The notice may contain conditions for maintenance of that eligibility. A determination under this section is based upon a demonstration of all of the following:

(a) The owner or operator is not ineligible for funding under section 21510(4) and (5).

(b) The refined petroleum underground storage tank or tanks are presently in compliance with the registration and fee requirements of part 211.

(c) The owner or operator is not the United States government.

(d) The owner or operator has financial responsibility for the deductible amount.

History: Add. 2016, Act 380, Eff. Mar. 22, 2017.

Popular name: Act 451

Popular name: NREPA

324.21511 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to eligibility of financial institution, land contract vendor, or local unit of government to receive money from fund for corrective action or indemnification.

324.21512 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to approval of expenditures on behalf of owner or operator.

324.21513 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to duties of fund administrator.

324.21514 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to payment of co-payment amount by owner or operator.

****** 324.21515 THIS SECTION IS AMENDED EFFECTIVE MARCH 22, 2017: See 324.21515.amended ******

324.21515 Receiving money from authority for corrective action; procedures.

Sec. 21515. (1) To receive money from the authority for corrective action, the owner or operator shall follow the procedures outlined in this section and shall submit a claim to the administrator containing information required by the administrator relevant to determining compliance with this part.

(2) An owner or operator shall not submit a claim under subsection (1) until work invoices in excess of the deductible amount have been incurred.

(3) Upon receipt of a completed claim pursuant to subsection (1), the administrator shall make all of the following determinations:

(a) Whether the owner or operator is eligible to receive funding under this part.

(b) Whether the work performed or proposed to be performed is consistent with the requirements of part 213, and whether those activities are consistent with achieving site closure.

(c) Whether the owner or operator has paid the deductible amount.

(d) Whether the corrective action performed is reasonable and necessary considering conditions at the site of the release.

(e) Whether the cost of performing the corrective action work is at or below the allowable reimbursement amount in the schedule of costs or, if the corrective action work is not a listed item, whether the cost is reasonable and necessary.

(4) The administrator may consult with the department and the department of licensing and regulatory affairs to make the determination required in subsection (3).

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(5) If the administrator determines under subsection (3) that the work invoices included with the claim are reasonable and necessary considering conditions at the site of the release and reasonable in terms of cost and the owner or operator is eligible for funding under this part, the administrator shall approve the claim and notify the owner or operator who submitted the claim of the approval. If the administrator determines that the work described on the work invoices submitted was not reasonable and necessary or the cost of the work is not reasonable, or that the owner or operator is not eligible for funding under this part, the administrator shall deny the claim or any portion of the work invoices submitted and give notice of the denial to the owner or operator who submitted the claim.

(6) The owner or operator may submit additional work invoices to the administrator after approval of a claim under subsection (5). Within 45 days after receipt of a work invoice, the administrator shall make the following determinations:

(a) Whether the work invoice complies with subsection (3).

(b) Whether the owner or operator is currently in compliance with the registration and fee requirements of part 211 and the rules promulgated under that part for the refined petroleum underground storage tank system from which the release occurred.

(7) If the administrator determines that the work invoice does not meet the requirements of subsection (6), the administrator shall deny the work invoice and give written notice of the denial to the owner or operator who submitted the work invoice.

(8) The administrator shall keep records of approved work invoices. If the owner or operator has not exceeded the allowable amount of expenditure provided in section 21510(1)(i), the administrator shall pay the claim within 45 days of making the determinations under subsection (6).

(9) The administrator may approve a reimbursement for a work invoice that was submitted by an owner or operator for corrective action taken if the work invoice meets the requirements of this part for an approved claim and an approved work invoice.

(10) Except as provided in subsection (11) and section 21519, the authority shall make a payment to the owner or operator within 30 days if sufficient money exists in the fund. Once payment has been made under this section, the authority is not liable for any claim on the basis of that payment.

(11) The authority may withhold partial payment of money on payment vouchers if there is reasonable cause to suspect that there are violations of section 21548 or if necessary to assure acceptable completion of the proposed work.

(12) The authority shall prepare and make available to owners and operators standardized claim and work invoice forms.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 269, Imd. Eff. Jan. 8, 1996;—Am. 1996, Act 181, Imd. Eff. May 3, 1996;—Am. 2012, Act 113, Imd. Eff. May 1, 2012;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

****** 324.21515.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 22, 2017 ******

324.21515.amended Receiving money from authority for corrective action; procedures.

Sec. 21515. (1) To receive money from the authority for corrective action, an owner or operator that has received notice from the administrator that its claim has been approved pursuant to section 21510(8) shall follow the procedures outlined in this section and shall submit work invoices to the administrator containing information required by the administrator relevant to determining compliance with this part.

(2) Within 45 days of receipt of work invoices submitted pursuant to subsection (1) using forms created by the authority, the administrator shall make all of the following determinations:

(a) Whether the owner or operator is eligible to receive funding under this part.

(b) Whether the work performed or proposed to be performed is consistent with part 213, and whether those activities are consistent with achieving site closure.

(c) Whether the owner or operator has paid the deductible amount.

(d) Whether the corrective action performed is reasonable and necessary considering conditions at the site of the release.

(e) Whether the cost of performing the corrective action work is at or below the allowable reimbursement amount in the schedule of costs or, if the corrective action work is not a listed item, whether the cost is reasonable and necessary, and whether the cost was based upon a competitive bidding process established by the authority.

(3) The administrator may consult with the department and the department of licensing and regulatory affairs to make the determination required in subsection (2).

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(4) If the administrator determines under subsection (2) that the work invoice is reasonable and necessary considering conditions at the site of the release and reasonable in terms of cost and the owner or operator is eligible for funding under this part, the administrator shall approve the work invoice and notify the owner or operator that submitted the work invoice of the approval. If the administrator determines that the work described on the work invoices submitted was not reasonable and necessary or the cost of the work is not reasonable, or that the owner or operator is not eligible for funding under this part, the administrator shall deny the work invoice or any portion of the work invoice submitted and give notice of the denial to the owner or operator that submitted the work invoice.

(5) The owner or operator may submit work invoices to the administrator that are related to a claim only after initial approval of the claim under section 21510(8) and if the aggregate amount of work invoices in the submission is $5,000.00 or more. This limitation does not apply to the final work invoice submission related to the approved claim.

(6) If the administrator determines that a work invoice does not meet the requirements of subsection (2) or (5), the administrator shall deny reimbursement for the work invoice and give written notice of the denial to the owner or operator who submitted the work invoice.

(7) The administrator shall approve a reimbursement for a work invoice that was submitted by an owner or operator for corrective action taken if the work invoice meets the requirements of this part for an approved claim and an approved work invoice.

(8) Except as provided in subsection (9) and section 21519, the authority shall make a joint payment to the owner or operator and the contractor that performed the work listed in the approved work invoices within 45 days after the date of the administrator's approval under subsection (4) if sufficient money exists in the fund. Once payment has been made under this section, the authority is not liable for any claim on the basis of that payment.

(9) The authority may withhold partial payment of money on payment vouchers if there is reasonable cause to suspect that there are violations of section 21548 or if necessary to assure acceptable completion of the proposed work.

(10) The authority shall prepare and make available to owners and operators standardized claim and work invoice forms.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 269, Imd. Eff. Jan. 8, 1996;—Am. 1996, Act 181, Imd. Eff. May 3, 1996;—Am. 2012, Act 113, Imd. Eff. May 1, 2012;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

Popular name: Act 451

Popular name: NREPA

***** *324.21516 THIS SECTION IS AMENDED EFFECTIVE MARCH 22, 2017: See 324.21516.amended* *****

324.21516 Assignment or transfer of approved claim; notice.

Sec. 21516. (1) An owner or operator with a claim approved pursuant to section 21515 for which corrective action is in progress who sells or transfers the property that is the subject of the approved claim to another person may assign or transfer the approved claim to that other person. The person to whom the assignment or transfer is made is eligible to receive money from the authority as an owner or operator for the release which is the subject of the approved claim. Allowable, outstanding approved or paid work invoices of the owner or operator making the assignment or transfer may be counted toward the deductible amount of the person to whom the assignment or transfer is made.

(2) An owner or operator assigning or transferring an approved claim pursuant to this section shall notify the administrator of the proposed assignment or transfer at least 10 days before the effective date of the assignment or transfer.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

***** *324.21516.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 22, 2017* *****

324.21516.amended Assignment or transfer of approved claim; notice.

Sec. 21516. (1) An owner or operator with a claim approved pursuant to section 21510 for which corrective action is in progress who sells or transfers the property that is the subject of the approved claim to another person may assign or transfer the approved claim to that other person. The person to whom the

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assignment or transfer is made is eligible to receive money from the authority as an owner or operator for the release which is the subject of the approved claim. Allowable, outstanding approved or paid work invoices of the owner or operator making the assignment or transfer may be counted toward the deductible amount of the person to whom the assignment or transfer is made.

(2) An owner or operator assigning or transferring an approved claim pursuant to this section shall notify the administrator of the proposed assignment or transfer at least 10 days before the effective date of the assignment or transfer.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

Popular name: Act 451

Popular name: NREPA

324.21517 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to responsibilities of owner or operator and compliance with certain requirements.

324.21518 Receiving money from authority for indemnification; request for indemnification; approval by attorney general; records; payment.

Sec. 21518. (1) To receive money from the authority for indemnification, the owner or operator shall submit to the administrator a request for indemnification containing the information required by the administrator, including a copy of the judgment obtained by a third party from a court of law against the owner or operator or the settlement entered into between the owner or operator and the third party, all documentation supporting the reasonableness of and justification for the judgment or settlement, and work invoices which conform to the requirements of this part. If the administrator determines that the owner or operator is eligible for funding under this part, is eligible for the amount requested, has paid the deductible amount, and has not exceeded the allowable amount of expenditure provided in section 21510(1)(i), and that the work invoices are payable under this part, the administrator shall forward a copy of the request for indemnification along with all supporting documentation to the attorney general. The attorney general shall approve the request for indemnification if there is a legally enforceable judgment against, or settlement with, the owner or operator that was caused by an accidental release and that is reasonable and consistent with the purposes of this part. The attorney general may raise as a defense to the request any rights or defenses that were or are available to the owner or operator and, in the case of a judgment, that were not heard and ruled upon by the court. If a request for indemnification is approved by the attorney general, the authority shall pay the indemnification amount.

(2) The administrator shall keep records of all approved requests for indemnification.

(3) The authority shall make a payment to an owner or operator for an approved indemnification request within 30 days if sufficient money is available to make the payment.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.21519 Order of payment; insufficient money available; liability of authority and state.

Sec. 21519. (1) The authority shall make payments on claims in the order in which they are received. However, if there is insufficient money available to make payments on all approved claims, the authority shall give notice to each owner that is eligible to submit a claim under this part advising the owners of the financial situation and the authority shall prioritize payments based upon the risks at the site to the public health, safety, or welfare or the environment. Payments on claims that are not funded shall be paid if revenues subsequently become available.

(2) The authority and the state are not liable for work invoices or requests for indemnification if revenues of the authority are insufficient to meet these claims.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.21520 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to establishment of audit program to monitor compliance.

****** 324.21521 THIS SECTION IS AMENDED EFFECTIVE MARCH 22, 2017: See 324.21521.amended ******

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324.21521 Denial of claim, work invoice, or request for indemnification; review; negotiated resolution; appeal.

Sec. 21521. (1) If the administrator denies a claim or work invoice, or a request for indemnification, the owner or operator who submitted the claim, work invoice, or request for indemnification may, within 14 days following the denial, request review by the board. However, if the administrator believes the dispute may be able to be resolved without the board's review, the administrator may contact the owner or operator regarding the issues in dispute and may negotiate a resolution of the dispute prior to the board's review. The board shall conduct a review of the denial to determine whether the claim, work invoice, or request for indemnification is payable under this part.

(2) A person who is denied approval by the board after review under subsection (1) may appeal the decision directly to the circuit court.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

****** 324.21521.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 22, 2017 ******

324.21521.amended Denial of claim, invoice, request for indemnification, or request for eligibility determination; review; negotiated resolution; appeal.

Sec. 21521. (1) If the administrator denies a claim, work invoice, request for indemnification, or request for an eligibility determination under section 21510(8), the owner or operator who submitted the claim, work invoice, request for indemnification, or request for an eligibility determination under section 21510(8) may, within 14 days following the denial, request review by the board. However, if the administrator believes the dispute may be able to be resolved without the board's review, the administrator may contact the owner or operator regarding the issues in dispute and may negotiate a resolution of the dispute prior to the board's review. The board shall conduct a review of the denial to determine whether the claim, work invoice, or request for indemnification is payable under this part.

(2) A person who is denied approval by the board after review under subsection (1) may appeal the decision directly to the circuit court.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

Popular name: Act 451

Popular name: NREPA

324.21522 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to appointment, terms, and duties of board of directors of Michigan underground storage tank financial assurance authority.

324.21523 Underground storage tank authority; creation; handling of funds.

Sec. 21523. The underground storage tank authority is created as a body corporate within the department and shall exercise its prescribed statutory power, financial duties, and financial functions independently of the director of the department or any other department. Funds of the authority shall be handled in the same manner and subject to the same provisions of law applicable to state funds or in a manner specified in a resolution of the authority authorizing the issuance of bonds or notes.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: For transfer of powers and duties of Michigan underground storage tank financial assurance authority, and its board of directors, to Michigan finance authority, see E.R.O. No. 2010-2, compiled at MCL 124.194.

Popular name: Act 451

Popular name: NREPA

324.21524 Authority; appointment, terms, and duties of members; vacancy; conduct of business; meetings open to public; quorum; voting; designation of representative; election of chairperson and other officers.

Sec. 21524. (1) The authority shall be governed by a board of directors consisting of the director of the department and 6 residents of the state appointed by the governor with the advice and consent of the senate as follows:

(a) An individual representing petroleum refiners.

(b) An individual representing independent petroleum marketers.

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(c) An individual from a statewide motor fuel retail association.

(d) An individual from a statewide business association that includes owners or operators of refined petroleum underground storage tanks.

(e) An individual from a statewide environmental organization.

(f) A member of the general public.

(2) The 6 appointed members of the board shall serve terms of 3 years. However, in making the initial appointments, the governor shall designate 2 appointed members to serve for 3 years, 2 appointed members to serve for 2 years, and 2 appointed members to serve for 1 year.

(3) Upon appointment to the board of directors under subsection (1), and upon the taking and filing of the constitutional oath of office, a member of the board of directors shall enter office and exercise the duties of the office to which he or she is appointed.

(4) A vacancy on the board of directors shall be filled in the same manner as the original appointment. A vacancy shall be filled for the balance of the unexpired term. A member of the board of directors shall hold office until a successor is appointed and qualified.

(5) Members of the board of directors and officers and employees of the authority are subject to 1968 PA 317, MCL 15.321 to 15.330, and 1968 PA 318, MCL 15.301 to 15.310, as applicable. A member of the board of directors or an officer, employee, or agent of the authority shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging his or her duties, a member of the board of directors or an officer, employee, or agent of the authority, when acting in good faith, may rely upon any of the following:

(a) The opinion of counsel for the authority.

(b) The report of an independent appraiser selected with reasonable care by the board of directors.

(c) Financial statements of the authority represented to the member of the board of directors, officer, employee, or agent to be correct by the officer of authority having charge of its books or account, or stated in a written report by the auditor general or a certified public accountant or the firm of the accountant to fairly reflect the financial condition of the authority.

(6) The board of directors shall organize and make its own policies and procedures. The board of directors shall conduct all business at public meetings held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of each meeting shall be given in the manner required by 1976 PA 267, MCL 15.261 to 15.275. Four members of the board of directors constitute a quorum for the transaction of business. An action of the board of directors shall be by a majority of the votes cast. The director of the department may designate a representative from his or her department to serve as a voting member of the board of directors for 1 or more meetings.

(7) The board of directors shall elect a chairperson from among its members and may elect any other officers the board of directors considers appropriate.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: For transfer of powers and duties of Michigan underground storage tank financial assurance authority, and its board of directors, to Michigan finance authority, see E.R.O. No. 2010-2, compiled at MCL 124.194.

Popular name: Act 451

Popular name: NREPA

324.21525 Appointment of administrator; employment of experts, other officers, agents, or employees; contract with department; report; audit.

Sec. 21525. (1) The board shall appoint an administrator of the authority and may delegate to the administrator responsibilities for acting on behalf of the authority. The authority may employ on a permanent or temporary basis legal and technical experts, and other officers, agents, or employees, to be paid from the funds of the authority. The authority shall determine the qualifications, duties, and compensation of those it employs, but an employee shall not be paid a higher salary than the director of the department. The authority may delegate to 1 or more members, officers, agents, or employees any of the powers or duties of the authority as the authority considers proper.

(2) The authority may contract with the department for the purpose of maintaining and improving the rights and interests of the authority.

(3) The authority shall annually file with the legislature a written report on its activities of the last year. This report shall be submitted not later than 270 days following the end of the fiscal year. This report shall specify the amount and source of revenues received, the status of investments made, and money expended with proceeds of bonds or notes issued by the finance authority under this part.

(4) The accounts of the authority are subject to annual audits by the state auditor general or a certified

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public accountant appointed by the auditor general. Records shall be maintained according to generally accepted accounting principles.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: For transfer of powers and duties of Michigan underground storage tank financial assurance authority, and its board of directors, to Michigan finance authority, see E.R.O. No. 2010-2, compiled at MCL 124.194.

Popular name: Act 451

Popular name: NREPA

****** 324.21526 THIS SECTION IS AMENDED EFFECTIVE MARCH 22, 2017: See 324.21526.amended ******

324.21526 Board of directors; powers.

Sec. 21526. Except as otherwise provided in this part, the board of directors may do all things necessary or convenient to implement this part and the purposes, objectives, and powers delegated to the board of directors by other laws or executive orders, including, but not limited to, all of the following:

(a) Adopt an official seal and bylaws for the regulation of its affairs and alter the seal or bylaws.

(b) Sue and be sued in its own name and plead and be impleaded.

(c) Enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers.

(d) With the prior consent of the director of the department, solicit and accept gifts, grants, loans, and other aid from any person or the federal, state, or local government or any agency of the federal, state, or local government, or participate in any other way in a federal, state, or local government program.

(e) Procure insurance against loss in connection with the property, assets, or activities of the authority.

(f) Invest money of the authority, at the board of directors' discretion, in instruments, obligations, securities, or property determined proper by the board of directors, and name and use depositories for its money.

(g) Contract for goods and services and engage personnel as necessary and engage the services of private consultants, managers, legal counsel, and auditors for rendering professional financial assistance and advice, payable out of any money of the authority.

(h) Indemnify and procure insurance indemnifying members of the board of directors from personal loss or accountability from liability asserted by a person on bonds or notes of the authority, or from any personal liability or accountability by reason of the issuance of the bonds or notes, or by reason of any other action taken or the failure to act by the authority.

(i) Do all other things necessary or convenient to achieve the objectives and purposes of the authority, this part, rules promulgated under this part, or other laws that relate to the purposes and responsibilities of the authority.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: For transfer of powers and duties of Michigan underground storage tank financial assurance authority, and its board of directors, to Michigan finance authority, see E.R.O. No. 2010-2, compiled at MCL 124.194.

For abolishment of board of directors of Michigan underground storage tank financial assurance authority, see E.R.O. No. 2010-2, compiled at MCL 124.194.

Popular name: Act 451

Popular name: NREPA

****** 324.21526.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 22, 2017 ******

324.21526.amended Board of directors; powers.

Sec. 21526. Except as otherwise provided in this part, the board of directors may do all things necessary or convenient to implement this part and the purposes, objectives, and powers delegated to the board of directors by other laws or executive orders, including, but not limited to, all of the following:

(a) Adopt an official seal and bylaws for the regulation of its affairs and alter the seal or bylaws.

(b) Sue and be sued in its own name and plead and be impleaded.

(c) Enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers.

(d) With the prior consent of the director of the department, solicit and accept gifts, grants, loans, and other aid from any person or the federal, state, or local government or any agency of the federal, state, or local government, or participate in any other way in a federal, state, or local government program.

(e) Procure insurance against loss in connection with the property, assets, or activities of the authority.

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(f) Contract for goods and services and engage personnel as necessary and engage the services of private consultants, managers, legal counsel, and auditors for rendering professional financial assistance and advice, payable out of any money of the authority.

(g) Indemnify and procure insurance indemnifying members of the board of directors from personal loss or accountability from liability asserted by a person on bonds or notes of the authority, or from any personal liability or accountability by reason of the issuance of the bonds or notes, or by reason of any other action taken or the failure to act by the authority.

(h) Do all other things necessary or convenient to achieve the objectives and purposes of the authority, this part, rules promulgated under this part, or other laws that relate to the purposes and responsibilities of the authority.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

Compiler's note: For transfer of powers and duties of Michigan underground storage tank financial assurance authority, and its board of directors, to Michigan finance authority, see E.R.O. No. 2010-2, compiled at MCL 124.194.

For abolishment of board of directors of Michigan underground storage tank financial assurance authority, see E.R.O. No. 2010-2, compiled at MCL 124.194.

Popular name: Act 451

Popular name: NREPA

324.21527 Assessment; bonds or notes; issuance; indebtedness, liability, or obligations of state not created; payment; expenses.

Sec. 21527. (1) The authority shall assess the potential demand for payment of claims under this part and shall provide the results of the assessment to the finance authority. Upon review of the results of the assessment, if the finance authority determines that it is prudent to do so, the finance authority may issue bonds or notes.

(2) The finance authority may authorize and issue its bonds or notes payable solely from the revenues or funds available to the fund under section 21508. Bonds or notes of the finance authority are not a debt or liability of the state, do not create or constitute any indebtedness, liability, or obligation of the state, and do not constitute a pledge of the faith and credit of the state. All finance authority bonds and notes are payable solely from revenues or funds pledged or available for their payment as authorized in this part. Each bond and note shall contain on its face a statement to the effect that the authority is obligated to pay the principal of and the interest on the bond or note only from revenues or from funds of the finance authority pledged for such payment and that the state is not obligated to pay that principal or interest and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the bond or note.

(3) All expenses incurred in implementing this part are payable solely from revenues or funds provided or to be provided under this part. This part does not authorize the finance authority to incur any indebtedness or liability on behalf of or payable by the state.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.21528 Bonds or notes; issuance; amount; purpose; payment; provisions; validity of signatures; sale; bonds or notes subject to other acts.

Sec. 21528. (1) The finance authority may issue from time to time bonds or notes in principal amounts the finance authority considers necessary to provide funds for any purpose, including, but not limited to, all of the following:

(a) The payment of approved claims under this part.

(b) The payment, funding, or refunding of the principal of, interest on, or redemption premiums on bonds or notes issued by the finance authority whether the bonds or notes or interest to be funded or refunded have or have not become due.

(c) The establishment or increase of reserves to secure or to pay finance authority bonds or notes or interest on those bonds or notes.

(d) The payment of interest on the bonds or notes for a period determined by the finance authority.

(e) The payment of all other costs or expenses of the finance authority incident to and necessary or convenient to implement its purposes and powers.

(2) The bonds or notes of the finance authority are not a general obligation of the finance authority but are payable solely from the revenues or funds, or both, pledged to the payment of the principal of and interest on the bonds or notes as provided in the resolution authorizing the bond or note.

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(3) The bonds or notes of the finance authority:

(a) Shall be authorized by resolution of the finance authority.

(b) Shall bear the date or dates of issuance.

(c) May be issued as either tax-exempt bonds or notes or taxable bonds or notes for federal income tax purposes.

(d) Shall be serial bonds, term bonds, or term and serial bonds.

(e) Shall mature at such time or times not exceeding 20 years from the date of issuance.

(f) May provide for sinking fund payments.

(g) May provide for redemption at the option of the finance authority for any reason or reasons.

(h) May provide for redemption at the option of the bondholder for any reason or reasons.

(i) Shall bear interest at a fixed or variable rate or rates of interest per annum or at no interest.

(j) Shall be registered bonds, coupon bonds, or both.

(k) May contain a conversion feature.

(*l*) May be transferable.

(m) Shall be in the form, denomination or denominations, and with such other provisions and terms as is determined necessary or beneficial by the finance authority.

(4) If a member of the board of directors or any officer of the finance authority whose signature or facsimile of his or her signature appears on the note, bond, or coupon ceases to be a member or officer before the delivery of that bond or note, the signature continues to be valid and sufficient for all purposes, as if the member or officer had remained in office until the delivery.

(5) Bonds or notes of the finance authority may be sold at a public or private sale at the time or times, at the price or prices, and at a discount as the finance authority determines. A finance authority bond or note is not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The bond or note of the finance authority is not required to be filed under the uniform securities act (2002), 2008 PA 551, MCL 451.2101 to 451.2703.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 181, Imd. Eff. May 3, 1996;—Am. 2009, Act 98, Imd. Eff. Sept. 24, 2009;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.21529 Bonds or notes; issuance; amounts; purpose; application of proceeds to purchase or retirement at maturity or redemption; investment of escrowed proceeds; use by authority; refunded bonds or notes considered as paid; termination of obligation.

Sec. 21529. (1) The authority may provide for the issuance of bonds or notes in the amounts the authority considers necessary for the purpose of refunding bonds or notes of the authority then outstanding, including the payment of any redemption premium and interest accrued or to accrue to the earliest or subsequent date of redemption, purchase, or maturity of these bonds or notes. The proceeds of bonds or notes issued for the purpose of refunding outstanding bonds or notes may be applied by the authority to the purchase or retirement at maturity or redemption of outstanding bonds or notes either on the earliest or subsequent redemption date, and, pending such applications, may be placed in escrow to be applied to the purchase or retirement at maturity or redemption on the date or dates determined by the authority. Pending such application and subject to agreements with noteholders or bondholders, the escrowed proceeds may be invested and reinvested in the manner the authority determines, maturing at the date or times as appropriate to assure the prompt payment of the principal, interest, and redemption premium, if any, on the outstanding bonds or notes to be refunded. After the terms of the escrow have been fully satisfied and carried out, the balance of the proceeds and interest, income, and profits, if any, earned or realized on the investment of the proceeds shall be returned to the authority for use by the authority in any lawful manner authorized under this part.

(2) In the resolution authorizing bonds or notes to refund bonds or notes, the authority may provide that the bonds or notes to be refunded are considered paid when there has been deposited in escrow money or investment obligations that would provide payments of principal and interest adequate to pay the principal and interest on the bonds to be refunded, as that principal and interest become due whether by maturity or prior redemption and that, upon the deposit of the money or investment obligations, the obligations of the authority to the holders of the bonds or notes to be refunded are terminated except as to the rights to the money or investment obligations deposited in trust.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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324.21530 Bonds or notes; assurance of timely payments; costs of issuance.

Sec. 21530. (1) The authority may authorize and approve an insurance contract, an agreement for a line of credit, a letter of credit, a commitment to purchase bonds or notes, an agreement to remarket bonds or notes, an agreement to manage payment, revenue or interest rate exposure, and any other transaction to provide security to assure timely payment of a bond or note.

(2) The authority may authorize payment from the proceeds of the bonds or notes, or other funds available, of the cost of issuance including, but not limited to, fees for placement, charges for insurance, letters of credit, lines of credit, remarketing agreements, agreements to manage payment, revenue or interest rate exposure, reimbursement agreements, or purchase or sales agreements or commitments, or agreements to provide security to assure timely payment of bonds or notes.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21531 Members of board of directors, executive director, or other officer; powers.

Sec. 21531. Within limitations that are contained in the issuance or authorization resolution of the finance authority, the finance authority may authorize a member of the board of directors, the executive director, or any other officer of the finance authority to do 1 or more of the following:

(a) Sell and deliver and receive payment for bonds or notes.

(b) Refund bonds or notes by the delivery of new bonds or notes whether or not the bonds or notes to be refunded are mature or subject to redemption.

(c) Deliver bonds or notes, partly to refund bonds or notes and partly for any other authorized purpose.

(d) Buy issued bonds or notes and resell those bonds or notes.

(e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights at the option of the authority or the holder, the place of delivery and payment, and other matters and procedures necessary to complete the transactions authorized.

(f) Direct the investment of any and all funds of the finance authority.

(g) Approve the terms of an insurance contract, an agreement for a line of credit, a letter of credit, a commitment to purchase notes or bonds, an agreement to remarket bonds or notes, or any other transaction to provide security to assure timely payment of a bond or note or an agreement to manage payment, revenue, or interest rate exposure.

(h) Execute any power, duty, function, or responsibility of the finance authority.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.21532 Contract with holders of bonds or notes; provisions.

Sec. 21532. A resolution authorizing bonds or notes may provide for all or any portion of the following that shall be part of the contract with the holders of the bonds or notes:

(a) A pledge to any payment or purpose of all or any part of the fund or authority revenues or assets to which its right then exists or may later come to exist, and of money derived from the revenues or assets, and of the proceeds of bonds or notes or of an issue of bonds or notes, subject to any existing agreements with bondholders or noteholders.

(b) A pledge of a loan, grant, or contribution from the federal or state government.

(c) The establishment and setting aside of reserves or sinking funds and the regulation and disposition of reserves or sinking funds subject to this part.

(d) Authority for and limitations on the issuance of additional bonds or notes for the purposes provided for in the resolution and the terms upon which additional bonds or notes may be issued and secured.

(e) The procedure, if any, by which the terms of a contract with noteholders or bondholders may be amended or abrogated, the number of noteholders or bondholders who are required to consent to the amendment or abrogation, and the manner in which the consent may be given.

(f) A contract with the bondholders as to the custody, collection, securing, investment, and payment of any money of the authority. Money of the authority and deposits of money may be secured in the manner determined by the authority. Banks and trust companies may give security for such deposits.

(g) A provision to vest in a trustee, or a secured party, property, income, revenues, receipts, rights, remedies, powers, and duties in trust or otherwise that the authority determines necessary or appropriate to

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adequately secure and protect noteholders and bondholders or to limit or abrogate the right of the holders of bonds or notes of the authority to appoint a trustee under this part or to limit the rights, powers, and duties of the trustee.

(h) A provision to provide to a trustee or the noteholders or bondholders remedies that may be exercised if the authority fails or refuses to comply with this part or defaults in an agreement made with the holders of an issue of bonds or notes, which may include any of the following:

(*i*) By mandamus or other suit, action, or proceeding to enforce the rights of the bondholders or noteholders, and require the authority to implement any other agreements with the holders of those bonds or notes and to perform the authority's duties under this part.

(*ii*) Bring suit upon the bonds or notes.

(*iii*) By action or suit, require the authority to account as if it were the trustee of an express trust for the holders of the bonds or notes.

(*iv*) By action, suit, or proceeding, enjoin any act or thing that may be unlawful or in violation of the rights of the holders of the bonds or notes.

(*v*) Declare the bonds or notes due and payable, and if all defaults are made good, then, as permitted by the resolution, to annul that declaration and its consequences.

(i) Any other matters of like or different character that in any way affect the security of protection of the bonds or notes.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21533 Pledge as valid and binding; lien.

Sec. 21533. A pledge made by the authority is valid and binding from the time the pledge is made. The money or property pledged by the authority is immediately subject to the lien of the pledge without a physical delivery or further act. The lien of a pledge is valid and binding against parties having claims of any kind in tort, contract, or otherwise against the authority, and is valid and binding as against the transfers of the money or property pledged, irrespective of whether parties have notice. Neither the resolution, the trust agreement, nor any other instrument by which a pledge is created is required to be recorded to establish and perfect a lien or security interest in the pledged property.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21534 Disposition of proceeds.

Sec. 21534. The proceeds of bonds or notes issued pursuant to this part shall be deposited into the fund or bond proceeds account as authorized or designated by resolution indenture or other agreement of the authority.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21535 Personal liability.

Sec. 21535. A member of the authority, any person executing bonds or notes issued under this part, or any person executing any agreement on behalf of the authority is not liable personally on the bonds or notes by reason of their issuance.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21536 Holders of bonds or notes; rights and remedies not limited, restricted, or impaired.

Sec. 21536. The state pledges to and agrees with the holders of bonds or notes issued under this part that the state shall not limit or restrict the rights vested in the authority by this part to fulfill the terms of an agreement made with the holders of authority bonds or notes, or in any way impair the rights or remedies of the holders of the bonds or notes of the authority until the bonds and notes, together with interest on the bonds or notes and interest on any unpaid installments of interest, and all costs and expenses in connection with an action or proceedings by or on behalf of those holders are fully met, paid, and discharged.

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History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21537 Persons authorized to invest funds; authority bonds or notes as security for public deposits.

Sec. 21537. Notwithstanding any restriction contained in any other law, the state and a public officer, local unit of government, or agency of the state or a local unit of government; a bank, trust company, savings bank and institution, savings and loan association, investment company, or other person carrying on a banking business; an insurance company, insurance association, or other person carrying on an insurance business; or an executor, administrator, guardian, trustee, or other fiduciary may legally invest funds belonging to them or within their control in bonds or notes issued under this part, and authority bonds or notes shall be authorized security for public deposits.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21538 Property and income of authority; bonds or notes as exempt from tax.

Sec. 21538. (1) Property of the authority is public property devoted to an essential public and governmental function and purpose. Income of the authority is for a public purpose.

(2) The property of the authority and its income and operation are exempt from all taxes and special assessments of the state or a political subdivision of the state.

(3) Bonds or notes issued by the authority, and the interest on and income from those bonds and notes, are exempt from all taxation of the state or a political subdivision of the state.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21539 Construction of part.

Sec. 21539. This part shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authority for the performance of each and every act and thing authorized by this part, and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21540 Rules.

Sec. 21540. The authority may promulgate rules as necessary to implement sections 21523 to 21539.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21541 Repealed. 2012, Act 113, Imd. Eff. May 1, 2012.

Compiler's note: For abolishment of the Michigan underground storage tank financial assurance policy board to the department of environmental quality and transfer of its powers and duties to the department of environmental quality, see E.R.O. No. 2007-4, compiled at MCL 324.99906.

The repealed section pertained to creation of Michigan underground storage tank financial assurance policy board.

Popular name: Act 451

Popular name: NREPA

324.21542 Repealed. 2012, Act 113, Imd. Eff. May 1, 2012.

Compiler's note: For abolishment of the Michigan underground storage tank financial assurance policy board to the department of environmental quality and transfer of its powers and duties to the department of environmental quality, see E.R.O. No. 2007-4, compiled at MCL 324.99906.

The repealed section pertained to list of qualified underground storage tank consultants.

Popular name: Act 451

Popular name: NREPA

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324.21543 Repealed. 2012, Act 113, Imd. Eff. May 1, 2012.

Compiler's note: The repealed section pertained to certification of individual as underground storage tank professional.

Popular name: Act 451

Popular name: NREPA

324.21544 Rules.

Sec. 21544. The department and the department of treasury may promulgate rules necessary to implement this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 324.21501 et seq. of the Michigan Administrative Code.

324.21545 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to promulgation of administrative rules.

324.21546 Liability; constitutionality of part.

Sec. 21546. (1) This part does not create any liability on behalf of the state. This part shall not be construed as making the state the guarantor of the fund.

(2) This part does not relieve any person who may be eligible to submit a claim to the authority from any liability that he or she may incur as the owner or operator of a refined petroleum underground storage tank system. The state is not assuming the liability of an owner or operator eligible for funding under this part; it is only providing assistance to such owners or operators in meeting the financial responsibility requirements.

(3) If all bonds or notes of the finance authority payable from the fund have been fully paid or provided for and if any provision of this part is found to be unconstitutional by a court of competent jurisdiction and the allowable time for filing an appeal has expired or the appellant has exhausted all of his or her avenues of appeal, this whole part shall be considered unconstitutional and invalid.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 181, Imd. Eff. May 3, 1996;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.21547 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to availability and cost of environmental impairment insurance.

324.21548 Knowledge of false, misleading, or fraudulent request for payment as felony or subject to civil fine; retroactive application; "fraudulent" or "fraudulent practice" defined; action brought by attorney general or county prosecutor; money owed as claim and lien; prosecutions under other laws not precluded; apportionment of fines.

Sec. 21548. (1) A person who makes or submits or causes to be made or submitted either directly or indirectly any statement, report, affidavit, application, claim, bid, work invoice, or other request for payment or indemnification under this part knowing that the statement, report, application, claim, bid, work invoice, or other request for payment or indemnification is false or misleading is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than $50,000.00, or both. In addition to any penalty imposed under this subsection, a person convicted under this subsection shall pay restitution to the authority for the amount received in violation of this subsection.

(2) A person who makes or submits or causes to be made or submitted either directly or indirectly any statement, report, application, claim, bid, work invoice, or other request for payment or indemnification under this part knowing that the statement, report, affidavit, application, claim, bid, work invoice, or other request for payment or indemnification is false, misleading, or fraudulent, or who commits a fraudulent practice, is subject to a civil fine of not more than $50,000.00 or twice the amount submitted, whichever is greater. In addition to any civil fine imposed under this subsection, a person found responsible under this subsection shall pay restitution to the authority for the amount received in violation of this subsection. The legislature intends that this subsection be given retroactive application.

(3) As used in subsection (2), "fraudulent" or "fraudulent practice" includes, but is not limited to, the following:

(a) Submitting a work invoice for the excavation, hauling, disposal, or provision of soil, sand, or backfill for an amount greater than the legal capacity of the carrying vehicle or greater than was actually carried,

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excavated, disposed, or provided.

(b) Submitting paperwork for services or work provided that was not in fact provided or that was not directly provided by the individual indicated on the paperwork.

(c) Contaminating an otherwise clean resource or site with contaminated soil or product from a contaminated resource or site.

(d) Returning any load of contaminated soil to its original site for reasons other than remediation of the soil.

(e) Causing damage intentionally or as the result of gross negligence to a refined petroleum underground storage tank system, which damage results in a release at a site.

(f) Placing a refined petroleum underground storage tank system at a contaminated site where no refined petroleum underground storage tank system previously existed for purposes of disguising the source of contamination or to obtain funding under this part.

(g) Submitting a work invoice for the excavation of soil from a site that was removed for reasons other than removal of the refined petroleum underground storage tank system or remediation.

(h) Any intentional act or act of gross negligence that causes or allows contamination to spread at a site.

(i) Registration of a nonexistent refined petroleum underground storage tank system with the department.

(j) Loaning to an owner or operator the deductible amount and then submitting or causing to be submitted inflated claims or invoices designed to recoup the deductible amount.

(k) Confirming a release without simultaneously providing notice to the owner or operator.

(*l*) Inflating bills or work invoices, or both, by adding charges for work that was not performed.

(m) Submitting a false or misleading laboratory report.

(n) Submitting bills or work invoices, or both, for sampling, testing, monitoring, or excavation that are not justified by the site condition.

(o) Falsely characterizing the contents of a refined petroleum underground storage tank system for purposes of obtaining funding under this part.

(p) Submitting or causing to be submitted bills or work invoices by or from a person who did not directly provide the service.

(q) Characterizing legal services as consulting services for purposes of obtaining funding under this part.

(r) Misrepresenting or concealing the identity, credentials, affiliation, or qualifications of principals or persons seeking, either directly or indirectly, funding or approval for participation under this part.

(s) Falsifying a signature on a claim application or a work invoice.

(t) Failing to accurately disclose the actual amount and carrier of unencumbered insurance coverage available for new environmental impairment or professional liability claims.

(u) Any other act or omission of a false, fraudulent, or misleading nature undertaken in order to obtain funding under this part.

(4) The attorney general or county prosecutor may conduct an investigation of an alleged violation of this section and bring an action for a violation of this section.

(5) If the attorney general or county prosecutor has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or records, however stored or embodied, or tangible object which is relevant to an investigation of a violation or attempted violation of this part or a crime or attempted crime against the fund, the attorney general or county prosecutor may, before bringing any action, make an ex parte request to a magistrate for issuance of a subpoena requiring that person to appear and be examined under oath or to produce the document, records, or object for inspection and copying, or both. Service may be accomplished by any means described in the Michigan court rules. Requests made by the attorney general may be brought in Ingham county.

(6) If a person objects to or otherwise fails to comply with a subpoena served under subsection (5), an action may be brought in district court to enforce the demand. Actions filed by the attorney general may be brought in Ingham county.

(7) The attorney general or county prosecutor may apply to the district court for an order granting immunity to any person who refuses to provide or objects to providing information, documents, records, or objects sought pursuant to this section. If the judge is satisfied that it is in the interest of justice that immunity be granted, he or she shall enter an order granting immunity to the person and requiring the person to appear and be examined under oath or to produce the document, records, or object for inspection and copying, or both.

(8) A person who fails to comply with a subpoena issued pursuant to subsection (5) or a requirement to appear and be examined pursuant to subsection (7) is subject to a civil fine of not more than $25,000.00 for each day of continued noncompliance.

(9) In addition to any civil fines or criminal penalties imposed under this part or the criminal laws of this

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state, the person found responsible shall repay any money obtained directly or indirectly under this part. Money owed pursuant to this section constitutes a claim and lien by the authority upon any real or personal property owned either directly or indirectly by the person. This lien shall attach regardless of whether the person is insolvent and may not be extinguished or avoided by bankruptcy. The lien imposed by this section has the force and effect of a first in time and right judgment lien.

(10) Subsection (1) does not preclude prosecutions under other laws of the state including, but not limited to, section 157a, 218, 248, 249, 280, or 422 of the Michigan penal code, 1931 PA 328, MCL 750.157a, 750.218, 750.248, 750.249, 750.280, and 750.422.

(11) All civil fines collected pursuant to this section shall be apportioned in the following manner:

(a) Fifty percent shall be deposited in the general fund and shall be used by the department to fund fraud investigations under this part.

(b) Twenty-five percent shall be paid to the office of the county prosecutor or attorney general, whichever office brought the action.

(c) Twenty-five percent shall be paid to a local police department or sheriff's office, or a city or county health department, if investigation by that office or department led to the bringing of the action. If more than 1 office or department is eligible for payment under this subsection, division of payment shall be on an equal basis. If there is not a local office or department that is entitled to payment under this subdivision, the money shall be forwarded to the state treasurer for deposit into the refined petroleum fund.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 181, Imd. Eff. May 3, 1996;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.21549 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to providing information contributing to fine or conviction.

324.21550 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to repeal of MCL 324.21508 and the authority's obligation to pay off bonds or notes.

324.21551 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to payment for interest subsidies, work invoices, and requests for indemnification.

324.21552 Repealed. 2006, Act 318, Eff. Dec. 31, 2006.

Compiler's note: The repealed section pertained to the refined petroleum cleanup advisory council.

Popular name: Act 451

Popular name: NREPA

324.21553 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to establishment of refined petroleum product cleanup initial program.

324.21554 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to establishment of temporary reimbursement program.

324.21555 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to administration and implementation of temporary reimbursement program.

324.21556 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to first round precertification applications.

324.21557 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to second round precertification applications.

324.21558 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to performance of corrective actions by eligible person and compliance with certain requirements.

324.21559 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to receipt of money under temporary reimbursement fund for corrective actions.

324.21560 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

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Compiler's note: The repealed section pertained to assignment or transfer of approved precertification application.

324.21561 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to denial of precertification application or work invoice.

324.21562 Repealed. 2012, Act 113, Imd. Eff. May 1, 2012.

Compiler's note: For abolishment of the temporary reimbursement program advisory board and transfer of its powers and duties to the department of environmental quality, see E.R.O. No. 2007-3, compiled at MCL 324.99905.

The repealed section pertained to creation of temporary reimbursement program advisory board.

Popular name: Act 451

Popular name: NREPA

324.21563 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to cessation of temporary reimbursement program.

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