

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

CHAPTER 3
MANAGEMENT OF NONRENEWABLE RESOURCES

SUBCHAPTER 1
GEOLOGICAL SURVEY DIVISION

PART 601
GEOLOGICAL SURVEY

324.60101 Definitions.

Sec. 60101. As used in this part:

(a) "Governing institution" means the state university within which the Michigan geological survey is established or continued under section 60102.

(b) "State geologist" means the chief of the office of oil, gas, and minerals, or a successor office, of the department of environmental quality.

(c) "State university" means a state university described in section 4, 5, or 6 of article VIII of the state constitution of 1963.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2011, Act 167, Imd. Eff. Oct. 11, 2011.

Popular name: Act 451

Popular name: NREPA

324.60102 Michigan geological survey; establishment within western Michigan university; duties of governing institution; transfer and establishment within another state university; conditions; order; agreement.

Sec. 60102. (1) Subject to subsection (2), the Michigan geological survey is established within western Michigan university and shall continue as an entity within a governing institution. The governing institution shall do both of the following:

(a) Oversee the operations of the Michigan geological survey.

(b) Appoint a director to supervise and carry out the duties of the Michigan geological survey.

(2) If western Michigan university, or a successor governing institution under this subsection, ceases to have an academic program that is primarily engaged in the study of geology or geosciences or substantially fails to fulfill the duties of the Michigan geological survey under this part in an adequate manner, or if the governing institution notifies the state geologist that it does not desire the Michigan geological survey to remain as an entity within that governing institution, the director of the department of environmental quality shall issue an order to transfer the Michigan geological survey to and establish it within another state university that has an academic program that is primarily engaged in the study of geology or geosciences. Before issuing an order under this subsection, the director of the department of environmental quality shall do all of the following:

(a) Provide public notice, including notice to the legislature, and an opportunity for public comment.

(b) Consider the recommendations of the state geologist.

(3) The Michigan geological survey may enter into an agreement with any state university to perform designated duties described in sections 60104 to 60106. Subject to the terms of the agreement, the state university entering into the agreement with the Michigan geological survey, or a department or office of that state university, may directly receive money or other assets to implement the agreement in the same manner as the Michigan geological survey under section 60108.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2011, Act 167, Imd. Eff. Oct. 11, 2011.

Popular name: Act 451

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324.60103 Repealed. 2011, Act 167, Imd. Eff. Oct. 11, 2011.

Compiler's note: The repealed section pertained to establishment of salaries of geological survey employees.

324.60104 Michigan geological survey; scope.

Sec. 60104. The Michigan geological survey shall continue to make a thorough geological survey of this state, which may include a determination of the succession and arrangement, thickness, and position of all

strata and rocks; their mineral character and contents and their economical uses; an investigation of soils and subsoils and the determination of their character and agricultural adaptation; and the investigation of all deposits of brines, coal, marl, clay, gypsum, lime, petroleum, natural gas, metals and metallic ores, building stone, marble, gritstone, materials for mortar and cement, mineral paint, and all other geological productions or features in this state capable of being converted to the uses of humans.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2011, Act 167, Imd. Eff. Oct. 11, 2011.

Popular name: Act 451

Popular name: NREPA

324.60105 Michigan geological survey; collection and conservation of cores, samples, and specimens.

Sec. 60105. The Michigan geological survey shall provide for the collection and conservation of cores, samples, and specimens for the illustration of every division of the geology and mineralogy of this state, to the extent that facilities and funds are available to do so.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2011, Act 167, Imd. Eff. Oct. 11, 2011.

Popular name: Act 451

Popular name: NREPA

324.60106 Annual report; contents.

Sec. 60106. The Michigan geological survey shall prepare and submit to the state geologist an annual report of progress and other reports, documents, and maps as necessary to fulfill its responsibilities.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2011, Act 167, Imd. Eff. Oct. 11, 2011.

Popular name: Act 451

Popular name: NREPA

324.60107 Notes, compilations, specimens, diagrams, and illustrations as state property.

Sec. 60107. All notes, memoranda, compilations, collections, specimens, diagrams, and illustrations that are made in the operation of the Michigan geological survey are the property of this state and shall be under the control of the governing institution.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2011, Act 167, Imd. Eff. Oct. 11, 2011.

Popular name: Act 451

Popular name: NREPA

324.60108 Michigan geological survey; receipt of money and assets.

Sec. 60108. The Michigan geological survey may receive money or other assets to implement this part from any of the following:

- (a) Funds appropriated by the legislature.
- (b) Federal, state, municipal, or private grants.
- (c) Any other source approved by the governing institution.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2011, Act 167, Imd. Eff. Oct. 11, 2011.

Popular name: Act 451

Popular name: NREPA

PART 603

SOIL AND ECONOMIC SURVEY

324.60301 Soil and economic survey; duty of department.

Sec. 60301. The department shall conduct a soil and economic survey of all lands in the state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60302 Soil and economic survey; purpose; direction and control; assistants; compensation; reimbursement.

Sec. 60302. The soil and economic survey provided for in this part shall be conducted by counties; and the order in which the soil and economic survey is conducted shall be determined by the department. The purpose of the work is to procure and make available for public use information and data as to the character of the

lands surveyed; their adaptability to agricultural purposes or similar uses; the various crops, if any, that may be profitably raised on those lands; and such other matters as are considered desirable and advantageous. The details of the work shall be under the direction and control of the department, which shall employ assistants as the department considers necessary. The compensation of these persons shall be established by the department, and paid as provided in this part. The employees of the department may be reimbursed only for money actually and necessarily expended in the performance of their duties under this part, such reimbursement to be made out of the fund created by this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60303 Soil and economic survey; completion; report; copies; printing.

Sec. 60303. Upon completion of the soil and economic survey in any county, the department shall cause a full and detailed report of the soil and economic survey to be made. The department shall cause as many copies of the report to be printed as the department determines are necessary. The expense of the printing shall be paid out of the general fund in the same way that other state printing is, by law, required to be paid for.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60304 Soil and economic survey; report; contents; maps; distribution.

Sec. 60304. The report required under section 60303 to be made upon the soil and economic survey in each county, subject to this part, shall set forth such information and data as will fulfill the general purpose defined in section 60302. However, the report shall not state or represent the money value of land surveyed. Insofar as is possible and expedient, the land surveyed shall be classified as to its agricultural adaptability and general character and as to the uses to which it may be put. Maps shall be prepared and incorporated in the report as may be considered necessary for public information and convenience. A copy of the report shall be sent to every public library in the state, and the remainder of the copies shall be kept for distribution, subject to the rules and regulations pertaining to the report that the department may, from time to time, adopt.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60305 Soil and economic survey; payment of expenses; claim or account; statement of unexpended funds.

Sec. 60305. Payments shall be made out of the fund created by this part only on the warrant of the state treasurer. However, payments shall not be made until the department has approved the claim or account and has certified the correctness of the claim or account. At the request of the department, the state treasurer shall furnish a statement at any time as to the amount of money remaining in the fund to be expended for the purposes of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60306 Cooperation with other agencies; effect.

Sec. 60306. In implementing the work contemplated in this part, the department may cooperate with the various counties of the state, with development bureaus, with any department, officer, bureau, or institution established and maintained by the United States government, and with any other institution, board, society, or association, either within or outside of this state. An agreement for cooperation shall not change or modify, in any way, the purpose of this part, as defined in section 60302.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60307 Right of entry on private property by department.

Sec. 60307. For the purposes of performing their respective duties under this part and carrying on the work of the soil and economic survey, the department and its employees may enter onto and be on private property.

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That property shall, however, not be injured or damaged in any way.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60308 Annual appropriation; carrying forward unexpended funds; disposition; reduction through federal aid.

Sec. 60308. Any portion of the annual appropriation provided for in this part that remains unexpended at the close of any fiscal year shall be carried forward into the next fiscal year, to the credit of the department, for the purposes provided under this part, and is subject to expenditure accordingly, it being the intention to make the entire amount appropriated available for the purposes of this part. Any sum remaining in the appropriation on the completion of the soil and economic survey provided for in this part, and after the making of the final report required in this part, is and shall remain a part of the general fund of the state and subject to the incidents pertaining to the general fund. However, if the federal government or any department of the federal government renders aid to this state for the general purposes covered by this part, the appropriation made pursuant to this part shall be reduced by the same amount, which amount shall revert to the general fund of this state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60309 Reports to legislature; contents.

Sec. 60309. The department shall prepare and submit to each legislature a report covering the work of the preceding 2 years. The report shall indicate specifically the lands that have been surveyed, the general progress and condition of the work, the expenditures that have been made, and the cooperative agreements, if any, that have been entered into. On the completion of the work, a detailed financial report shall be made to the legislature, together with the recommendations and suggestions that the department considers necessary.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 605

AERIAL PHOTOS, SURVEYS, AND MAPS

324.60501 Aerial photographs and ground control surveys for preparation of base maps; cooperative agreements.

Sec. 60501. The department, on behalf of the state, may confer with the director of the United States geological survey or his or her representatives and accept the cooperation of the federal government with this state in making aerial photographs and necessary ground control surveys of those portions of the state as may be mutually agreed upon by the cooperating governments, for the preparation of (utility) base maps of those portions of the state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60502 Preparation of base maps; authority of department to contract with federal government; contents; right of entry on private lands.

Sec. 60502. The department may, on behalf of the state, contract with the United States government for the aerial photographing and mapping, scale of photographs and maps, determining the method, form, and execution of maps, and all other details of the work necessary to prepare base maps of those portions of the state as may be agreed upon. The state shall receive negatives of all aerial photographs and copies of all base maps prepared. The maps shall be prepared so as to show the location of roads, railroads, streams, canals, lakes, rivers, timbered areas, and all other natural and artificial features capable of being mapped by the methods to be mutually agreed upon by the geological surveys of the state and the federal government. The state shall not contract to pay more than the amounts paid by the federal government for these purposes. For the purpose of making these surveys, persons employed in making the surveys may enter at reasonable times upon all parts of all lands within the boundaries of this state, but this part does not authorize any unnecessary interference with private rights or the performance of any act not necessary for the preparation of the base

maps.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60503 Preparation of base maps; payment of expenses.

Sec. 60503. The amounts authorized to be paid under this part shall first be certified to be correct by the department and shall be paid out of the state treasury upon warrant of the state treasurer.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 607 STATE SOIL SURVEY

324.60701 Definitions.

Sec. 60701. As used in this part:

(a) "Soil survey" means the identification and description of kinds of soil, the plotting of boundaries on aerial photographs between kinds of soils, and the description and evaluation of their importance and response under various uses and management practices.

(b) "Soil scientist" means a person who meets the qualification standards of the GS-470 soil scientist series established by the United States civil service commission.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60702 Inventory of soil resources of state; 10-year program; minimum acres for soil surveys; conducting soil surveys on proportional basis.

Sec. 60702. (1) The department of agriculture shall provide an inventory of the soil resources of the state by a 10-year program for the acceleration of the soil survey on nonfederal lands. Soil surveys will be made on a minimum of 3,000,000 acres over the 10 years following December 14, 1977 under former Act No. 268 of the Public Acts of 1977.

(2) Soil surveys shall be conducted on a proportional basis of not more than 2 counties in the Lower Peninsula being surveyed for each county in the Upper Peninsula until all counties in the Upper Peninsula have been surveyed. If the soil surveys cannot be conducted on a proportional basis due to the lack of funding from any of the counties, then the department of agriculture shall establish an alternative proportional basis to promote the conducting of the surveys in the time period established in subsection (1).

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60703 Authority of department of agriculture.

Sec. 60703. The department of agriculture shall implement this part by employing, subject to civil service rules, and equipping soil scientists, within appropriations for that purpose, to make soil surveys through cooperative arrangements with the United States department of agriculture soil conservation service and the Michigan agricultural experiment station. The soil survey shall be conducted under national standards and guidelines for naming, classifying, and interpreting soils and for publishing soil surveys in the United States department of agriculture series. The department of agriculture shall also, in conjunction with the department, design and implement standards and guidelines for use in primarily forested areas. The standards and guidelines may include the additional soil characteristics which must be measured to determine forest growth and continued protection, and the modification of soil body grouping methods to allow interpretation and inventory of soils for forest management purposes. Michigan technological university, Ford forestry center shall provide technical backup with respect to soil survey in forestry areas.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60704 Department of agriculture; budget requests; appropriations.

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Sec. 60704. The department of agriculture shall make yearly budget requests and the legislature shall annually appropriate funds to implement this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 609 RESOURCE INVENTORY

324.60901 Definitions.

Sec. 60901. As used in this part:

(a) "Classification system" means a mechanism to identify the current use of land and any structures on the land.

(b) "Data management system" means a mechanism which relies on a computer to manipulate, store, and retrieve information collected and updated during a resource inventory.

(c) "Inventory" means the land resource and current use inventory.

(d) "Regional planning commission" means a regional planning commission designated by the governor pursuant to executive directive to carry out planning in a multicounty region of the state.

(e) "Technical assistance" means the aid that the department shall provide to municipalities, counties, and other interested groups and individuals, on the use of the land resource and current use inventory and related information for planning and resource management decisions.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60902 Project design study; land resource and current use inventory; technical assistance program; recommendations.

Sec. 60902. (1) The department shall make or have made a project design study. The study shall determine the appropriate operational criteria, computer software and hardware, staffing, available information resources, data updating methodology, most economical inventory resources, location of data management operations, linkages with other data management systems in the state, data geographic base configuration, data delivery system, and other information necessary to complete the inventory and development of a data management system.

(2) The department shall make or have made a land resource and current use inventory, as provided in sections 60904 and 60905, of all land, public or private, in this state. The land resource and current use inventory shall, if appropriate, rely on any other information and surveys.

(3) The department shall create a technical assistance program for the purpose of providing services to municipalities and counties as provided in section 60903.

(4) The department shall prepare recommendations regarding means to address problems or issues indicated by the inventory.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60903 Technical assistance program; creation and purpose; utilizing programs of regional planning commissions; scope of technical assistance.

Sec. 60903. (1) The department shall create a technical assistance program designed to help municipalities and counties effectively use the inventory. The technical assistance program shall, when feasible, utilize the technical assistance programs of regional planning commissions. The technical assistance shall include all of the following:

(a) The publication and distribution of the inventory as applicable to each municipality and county in the state.

(b) The preparation and distribution of land resource management manuals to assist municipalities and counties, planning and resource management entities, and other federal, state, and local agencies in updating their planning and resource management programs to incorporate the inventory. Land resource management manuals may also be prepared to assist municipalities and counties in solving problems that confront their planning resource management programs.

(c) The conducting of workshops, in conjunction with local government associations, regarding the

inventory.

(d) The provision of a team of experts on the inventory to assist in problem solving by municipalities and counties.

(e) The provision of an inventory information center and library function that municipalities and counties may utilize in their own programs.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60904 Land resource portion of inventory; format; scope of inventory; option to purchase or exchange wetland; exemption from property taxes.

Sec. 60904. (1) The land resource portion of the inventory shall be completed in a format that may be readily integrated into the data management system, and shall provide a base of information to analyze the existing and future productivity of the state's natural resources and provide information to assist in the analysis of the timing, location, and intensity of future development in the state. The format should also include information that will be readily usable and available to assist local governmental units in their land use planning. The inventory may include any of the following:

(a) Geological features, including groundwater features such as depth to groundwater, groundwater recharge zones, and potable aquifers.

(b) Land area with characteristics that pose problems to development, such as an area subject to reasonably predictable hazardous natural phenomenon, which may include flooding, high-risk erosion, or subsidence.

(c) Land area with characteristics that make it suited for agricultural use.

(d) Land area with characteristics that make it suited for silvicultural use.

(e) Metallic and nonmetallic mineral deposits.

(f) Hydrological features, including lakes, rivers and creeks, impoundments, drainage basins, and wetlands.

(g) Land area of wildlife habitat, including each significant breeding area or area used by migratory wildlife.

(h) Topographic contours.

(2) If the department designates an area as wetland, the state may negotiate and contract for an option to purchase or exchange the wetland in order to protect the wetland. The option to purchase or exchange the wetland shall be valid for 5 years. After an option to purchase is negotiated, a person may apply for and receive consideration for an exemption from property taxes levied pursuant to the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws, for the duration of the option to purchase.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60905 Current use portion of inventory; classification system; scope.

Sec. 60905. The current use portion of the inventory shall be completed using a consistent classification system that can be readily integrated into the data management system, and shall provide the base to analyze the existing use and cover in the state. The current use inventory may include any of the following:

(a) Substantially undeveloped land devoted to the production of plants and animals useful to humanity, including forages and sod crops; grain and feed crops; dairy and dairy products; livestock, including the breeding and grazing of those animals; fruits of all kinds; vegetables; and other similar uses and activities.

(b) Land used in the production of fiber and other woodland products or that supports trees that are protective of water resources, soils, recreation, or wildlife habitat.

(c) Land that is being mined, drilled, or excavated for metallic and nonmetallic mineral, rock, stone, gravel, clay, soil, or other earth, petroleum, or natural gas resources.

(d) A site, structure, district, or archaeological landmark that is officially included in the national register of historic places or designated as a historic site pursuant to state or federal law.

(e) Urban and developed land, including residential, commercial, industrial, transportation, communication, utilities, and open space uses and including recreational land.

(f) Land owned on behalf of the public, including land managed by federal, state, or local government or school districts.

(g) Land enrolled in part 361.

(h) Land enrolled in part 511.

(i) Land designated for tax abatements, restricted use, or specific use under a public act of this state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60906 Conducting current use portion of inventory; preparation and contents of criteria; circulation of criteria; notice of intent to perform work; assistance, data, and information.

Sec. 60906. (1) The current use portion of the inventory may be conducted by municipalities, counties, or regional planning commissions as provided in subsection (4). A municipality, county, or regional planning commission conducting a portion of the current use inventory shall conduct that portion on a scale, level of detail, format, and classification system prepared by the department.

(2) By December 27, 1980, the department shall prepare criteria for municipality, county, and regional planning commission participation in the current use inventory process. The criteria shall specify the scale, level of detail, format, and classification system to be used in the current use portion of the inventory and shall contain forms and information on the financial reimbursement provisions provided in section 60907.

(3) The criteria prepared under subsection (2) shall be circulated by the department to local government associations and to a municipality, county, or regional planning commission, upon request. By March 27, 1982, a municipality with an established planning commission may submit to the department and to the county board of commissioners of the county in which the municipality is primarily located a notice of intent to perform or cause to be performed the work necessary to complete the current use portion of the inventory. By June 27, 1982, a county with an established planning commission may submit to the department a notice of intent to perform or cause to be performed the work necessary to complete the current use portion of the inventory for each area for which a municipality is not performing the work necessary to complete the current use portion of the inventory. By September 27, 1982, a regional planning commission may submit a notice of intent to the department to perform the work necessary to complete the current use inventory for each area not covered by a municipality or county notice of intent. For each area not covered by a notice of intent under this subsection, the department shall make or cause to be made the current use portion of the inventory.

(4) A municipality, county, or regional planning commission engaged in the preparation of the current use portion of the inventory may make use of assistance, data, and information made available to it by public or private organizations.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60907 Reimbursement for preparation of current use portion of inventory; certification; prorating amount.

Sec. 60907. The state shall reimburse each municipality, county, or regional planning commission engaged in the preparation of the current use portion of the inventory for 75% of the expenditures certified by the department. Certification shall be based upon conformance to the format, scale, and classification system provisions of the contract between the municipality, county, or regional planning commission and the department. If the amount appropriated during any fiscal year is not sufficient to provide the 75% reimbursement, the director of the department of management and budget shall prorate an amount among the eligible municipalities, counties, and regional planning commissions.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60908 Review and updating of land resource and current use portions of inventory.

Sec. 60908. (1) The land resource portion of the inventory shall be reviewed and updated when necessary, but not less than once every 10 years.

(2) The current use portion of the inventory shall be reviewed and updated when necessary, but not less than once each 5 years.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60909 Fees for generating products or rendering services.

Sec. 60909. The department may charge fees for generating products or rendering services based on the information in the inventory. The fees shall not exceed the costs to the department of generating the products

or rendering the services. The amount of money expended by the department for generating products or rendering services in a fiscal year shall not exceed the amount appropriated for that fiscal year or the amount of the fees actually received during that fiscal year, whichever is less.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60910 Controlling or curtailing development of private property; prohibitions.

Sec. 60910. (1) This part shall not be construed to permit the state, the department, or a person to exercise control over private property or to curtail development of private property.

(2) This part shall not:

(a) Constitute a state land use plan.

(b) Be used by any state agency to control the existing and future productivity of the state's natural resources or the timing, location, or intensity of future development in the state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBCHAPTER 2 REGULATION OF OIL AND GAS WELLS

PART 610 UNIFIED SURFACE AND SUBSURFACE OIL OR GAS OWNERSHIP

324.61001 Definitions.

Sec. 61001. As used in this part:

(a) "Department" means the department of natural resources.

(b) "Severed oil and gas rights" means those subsurface oil and gas rights held by the department on land in which the department does not own the surface rights to the land.

History: Add. 1998, Act 117, Imd. Eff. June 9, 1998.

Popular name: Act 451

Popular name: NREPA

324.61002 Inventory and categorization of land; contract.

Sec. 61002. (1) Within 4 years after the effective date of this section, the department shall complete an inventory of all land under the jurisdiction of the department and shall categorize the land as follows:

(a) All land in which the department owns both the surface rights and the oil and gas rights.

(b) All land in which the department owns the surface rights but not the oil and gas rights.

(c) All land in which the department owns the oil and gas rights but not the surface rights.

(2) The department may contract for the completion of the inventory under subsection (1).

History: Add. 1998, Act 117, Imd. Eff. June 9, 1998.

Popular name: Act 451

Popular name: NREPA

324.61003 Divestiture of severed oil and gas rights; reuniting oil and gas rights with surface rights; deed restriction; reversion of subsurface rights.

Sec. 61003. (1) The department shall implement procedures in compliance with this part that allow the department, after consultation with the natural resources trust fund board and approval of the natural resources commission, to divest itself of severed oil and gas rights and reunite the oil and gas rights with the surface rights. The department is not required to divest itself of oil and gas rights to land that is in production or is leased or permitted for production, or to land which the department determines has unusual or sensitive environmental features that should be reserved by the state and maintained in an undeveloped state, or to land which the department may consider offering for exchange to consolidate inholdings within management areas.

(2) When the department transfers oil and gas rights under this part, the department shall include a deed restriction that restricts the oil and gas rights from being severed from the surface rights in the future. If the landowner severs the subsurface rights from the surface rights, the subsurface rights revert to this state.

History: Add. 1998, Act 117, Imd. Eff. June 9, 1998.

Popular name: Act 451

Popular name: NREPA

324.61004 Divestiture of severed oil and gas rights; basis; priority; plan for attaching monetary value; offer to sell or transfer severed rights to surface owner; notice; duration of designated price; petition; disposition of money received.

Sec. 61004. (1) The department may divest itself of severed oil and gas rights on a county-by-county basis. The department may prioritize counties in the order in which it intends to offer divestiture sales or transfers pursuant to this part.

(2) Prior to divesting itself of severed oil and gas rights, the department shall develop a plan for attaching a monetary value to those rights based upon current market conditions. This plan may include requiring the purchasing party to pay all costs associated with completing the transaction including a proportional share of the costs of completing the inventory. Additionally, the department may trade severed oil and gas rights for other land or rights in land if such a trade is in the best interest of the state. At the time the department transfers oil and gas rights for land held by a local unit of government, and for parcels of land smaller than 5 acres in size, the department shall transfer the oil and gas rights only for the cost of processing the transaction.

(3) In each county in which the department offers to sell or transfer severed oil and gas rights to the surface owner. The department shall publish a notice in a newspaper of general circulation in the county where the oil and gas rights are located and provide notification to the local taxing authority of this state's offer to sell severed oil and gas rights to surface owners. A price designated by the department for the purchase of oil and gas rights shall be valid for a minimum of 90 days. A landowner who desires to accept the department's offer to sell or transfer the severed oil and gas rights shall provide the department with a copy of a recorded deed showing the person's ownership of the land. A person who attempts to purchase oil and gas rights from the department who is not the surface owner forfeits any money given to the department.

(4) After the 90-day period described in subsection (3), the surface owner or a subsequent surface owner may petition the department for sale of the severed oil and gas rights at a price agreeable to the department.

(5) All money received by the department for the sale or transfer of oil or gas rights pursuant to this part shall be forwarded to the state treasurer for deposit into the Michigan natural resources trust fund established in part 19.

History: Add. 1998, Act 117, Imd. Eff. June 9, 1998.

Popular name: Act 451

Popular name: NREPA

PART 615
SUPERVISOR OF WELLS

324.61501 Definitions.

Sec. 61501. Unless the context requires a different meaning, the words defined in this section have the following meanings when used in this part:

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

(b) "Field" means an underground reservoir or reservoirs containing oil or gas, or both. Field also includes the same general surface area that is underlaid or appears to be underlaid by at least 1 pool. Field and pool have the same meaning if only 1 underground reservoir is involved. However, field, unlike pool, may relate to 2 or more pools.

(c) "Fund" means the oil and gas regulatory fund created in section 61525b.

(d) "Gas" means a mixture of hydrocarbons and varying quantities of nonhydrocarbons in a gaseous state which may or may not be associated with oil, and includes those liquids resulting from condensation.

(e) "Illegal container" means a receptacle that contains illegal oil or gas or illegal products.

(f) "Illegal conveyance" means a conveyance by or through which illegal oil or gas or illegal products are being transported.

(g) "Illegal oil or gas" means oil or gas that has been produced by an owner or producer in violation of this part, a rule promulgated under this part, or an order of the supervisor issued under this part.

(h) "Illegal product" means a product of oil or gas or any part of a product of oil or gas that was knowingly processed or derived in whole or in part from illegal oil or gas.

(i) "Market demand" means the actual demand for oil or gas from any particular pool or field for current requirements for current consumption and use within or outside the state, together with the demand for such amounts as are necessary for building up or maintaining reasonable storage reserves of oil or gas or the products of oil or gas.

(j) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, that are produced at the well in liquid form by ordinary production methods and that are not the result of condensation of gas after it leaves the underground reservoir.

(k) "Owner" means the person who has the right to drill a well into a pool, to produce from a pool, and to receive and distribute the value of the production from the pool for himself or herself either individually or in combination with others.

(l) "Pool" means an underground reservoir containing a common accumulation of oil or gas, or both. Pool includes a productive zone of a general structure that is completely separated from any other zone in the structure, or is declared to be a pool by the supervisor of wells.

(m) "Producer" means the operator, whether owner or not, of a well or wells capable of producing oil or gas or both in paying quantities.

(n) "Product" means any commodity or thing made or manufactured from oil or gas, and all derivatives of oil or gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue treated crude oil, residuum, gas oil, naphtha, distillate, gasoline, casing-head gasoline, natural gas gasoline, kerosene, benzene, wash oil, waste oil, lubricating oil, and blends or mixtures of oil or gas or any derivatives of oil or gas whether enumerated or not.

(o) "Supervisor" or "supervisor of wells" means the department.

(p) "Tender" means a permit or certificate of clearance, approved and issued or registered under the authority of the supervisor, for the transportation of oil or gas or products.

(q) "Waste" in addition to its ordinary meaning includes all of the following:

(i) "Underground waste", as those words are generally understood in the oil business, and including all of the following:

(A) The inefficient, excessive, or improper use or dissipation of the reservoir energy, including gas energy and water drive, of any pool, and the locating, spacing, drilling, equipping, operating, or producing of a well or wells in a manner to reduce or tend to reduce the total quantity of oil or gas ultimately recoverable from any pool.

(B) Unreasonable damage to underground fresh or mineral waters, natural brines, or other mineral deposits from operations for the discovery, development, and production and handling of oil or gas.

(ii) "Surface waste", as those words are generally understood in the oil business, and including all of the following:

(A) The unnecessary or excessive surface loss or destruction without beneficial use, however caused, of gas, oil, or other product, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage, or fire, especially a loss or destruction incident to or resulting from the manner of spacing, equipping, operating, or producing a well or wells, or incident to or resulting from inefficient storage or handling of oil.

(B) The unnecessary damage to or destruction of the surface; soils; animal, fish, or aquatic life; property; or other environmental values from or by oil and gas operations.

(C) The unnecessary endangerment of public health, safety, or welfare from or by oil and gas operations.

(D) The drilling of unnecessary wells.

(iii) "Market waste", which includes the production of oil or gas in any field or pool in excess of the market demand as defined in this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 115, Imd. Eff. June 9, 1998;—Am. 1998, Act 252, Imd. Eff. July 10, 1998;—Am. 1998, Act 303, Imd. Eff. July 28, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61502 Construction of part.

Sec. 61502. It has long been the declared policy of this state to foster conservation of natural resources so that our citizens may continue to enjoy the fruits and profits of those resources. Failure to adopt such a policy in the pioneer days of the state permitted the unwarranted slaughter and removal of magnificent timber abounding in the state, which resulted in an immeasurable loss and waste. In an effort to replace some of this loss, millions of dollars have been spent in reforestation, which could have been saved had the original timber been removed under proper conditions. In past years extensive deposits of oil and gas have been discovered that have added greatly to the natural wealth of the state and if properly conserved can bring added prosperity for many years in the future to our farmers and landowners, as well as to those engaged in the exploration and development of this great natural resource. The interests of the people demand that exploitation and waste of

oil and gas be prevented so that the history of the loss of timber may not be repeated. It is accordingly the declared policy of the state to protect the interests of its citizens and landowners from unwarranted waste of gas and oil and to foster the development of the industry along the most favorable conditions and with a view to the ultimate recovery of the maximum production of these natural products. To that end, this part is to be construed liberally to give effect to sound policies of conservation and the prevention of waste and exploitation.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61503 Supervisor of wells; assistants; commission as appeal board; hearing; compensation and expenses; office.

Sec. 61503. (1) The supervisor of wells shall designate suitable assistants as are required to implement this part.

(2) The commission shall act as an appeal board regarding the issuance, denial, suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a permit under this part. When a producer or owner considers an order, action, inaction, or procedure as proposed, initiated, or made by the supervisor to be burdensome, inequitable, unreasonable, or unwarranted, the producer or owner may appeal to the commission or the court for relief from the order, action, inaction, or procedure as provided in this act. The chairperson of the commission shall set a date and place to hear the appeal, which may be at a regular meeting of the commission or a special meeting of the commission called for that purpose.

(3) The supervisor and employees, in addition to their salaries, shall receive their reasonable expenses while away from their homes traveling on business connected with their duties. A member of the commission shall not receive compensation for discharging duties under this part; however, a member is entitled to reasonable expenses while traveling in the performance of a duty imposed by this part. Salaries and expenses authorized in this part shall be paid out of the state treasury in the same manner as the salaries and expenses of other officers and employees of the department are paid.

(4) The department of management and budget shall furnish suitable offices for the use of the supervisor and his or her employees.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61503a Gas lease; duties of lessee; monthly revenue statements and payments; initiation; deferment.

Sec. 61503a. (1) Beginning 12 months after the effective date of this section, a person who has entered into a gas lease as a lessee prior to or after the effective date of this section shall do all of the following:

(a) Starting after production begins, for a well that begins continuous gas production after the effective date of this section, or starting on the effective date of this section for a well that began continuous gas production on or before the effective date of this section, provide the lessor who has an interest in the leased property with monthly revenue statements written in plain English that provide all of the following:

(i) Under the heading "unit price", the price received by the lessee per 1,000 cubic feet or 1,000,000 BTUs of gas sold. The lessee shall pay to the lessor his or her proper share of the gross proceeds or value, as provided in the lease.

(ii) A statement of the deductions taken from the lessor's royalty, and the purpose of those deductions. The statement of the deductions shall be itemized, except that a lessee may group deductions under general categories if the lessee states that a separate itemized statement of the deductions will be furnished upon written request and states the address to which a written request for an itemized statement should be directed. This section does not prohibit a lessee from making deductions on an estimated basis for a calendar year or other 12-month accounting period if this is disclosed in the monthly revenue statement or the separate itemized statement. If an estimate is used, the lessee shall determine the actual amount and make any necessary adjustments within 180 days after the end of the calendar year or other 12-month accounting period. However, if any costs have not been finally determined, the lessee may reserve an amount which the lessee considers in good faith to be adequate to cover the costs that have not been finally determined and shall make any necessary adjustments when the actual costs have been finally determined.

(b) Starting at the end of the calendar year or other 12-month accounting period after production begins for a well that begins continuous production after the effective date of this section, or starting at the end of the calendar year or other 12-month accounting period when this section becomes effective for a well that began continuous production on or before the effective date of this section, prepare an annual accounting of gas sales from the leased property and any deductions taken from the lessor's royalty during the calendar year or other 12-month accounting period. The lessee shall complete the accounting within 180 days after the end of the calendar year or other 12-month accounting period. However, if any costs have not been finally determined, the lessee may account for these on the basis of a reserve which the lessee considers in good faith to be adequate to cover the costs that have not been finally determined, and shall prepare a supplemental accounting when the actual costs have been finally determined. The lessee shall notify the lessor of the availability of the accounting within 180 days after the end of the calendar year or other 12-month accounting period, and shall furnish a copy of the accounting upon request of the lessor within 30 days of receipt of the request. The notification as to the availability of the accounting may be made on a monthly revenue statement and need not be a separate document.

(2) Subject to section 61503b(4), the monthly revenue statements and payments under subsection (1)(a) shall be initiated promptly after the determination of the divisions of interest of the parties entitled to share in the production, unless a valid agreement between the lessee and the lessor provides otherwise. However, if the entitlement of the lessor to receive payment is in question because of lack of good and marketable record title or because of any circumstance that may expose the lessee to the risk of multiple liability or liability to a third party if the payment is made, the lessee may defer payment to that lessor until the title or other circumstance has been resolved, unless a valid agreement between the lessee and the lessor provides otherwise. If the mailing address of the lessor, or place where payment should be made, is unknown, payment may be deferred until the lessee receives that information. If the total amount of the royalties is less than \$50.00 at the end of any month, payment may be deferred until the total amount reaches at least \$50.00, unless a valid agreement between the lessor and the lessee provides otherwise.

History: Add. 1998, Act 127, Eff. Mar. 28, 2000.

Compiler's note: Enacting section 2 of 1998 PA 127, which provided that 1998 PA 127 would not take effect unless House Bill No. 4259 of the 89th Legislature was enacted into law, was repealed by Enacting section 1 of 1999 PA 246.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61503b Postproduction costs.

Sec. 61503b. (1) A person who enters into a gas lease as a lessee after March 28, 2000 shall not deduct from the lessor's royalty any portion of postproduction costs unless the lease explicitly allows for the deduction of postproduction costs. If a lease explicitly provides for the deduction of postproduction costs, the lessee may only deduct postproduction costs for the following items, unless the lease explicitly and specifically provides for the deduction of other items:

(a) The reasonable costs of removal of carbon dioxide (CO₂), hydrogen sulfide (H₂S), molecular nitrogen (N₂), or other constituents, except water, the removal of which will enhance the value of the gas for the benefit of the lessor and lessee.

(b) Transportation costs after the point of entry into any of the following:

(i) An independent, nonaffiliated, third-party-owned pipeline system.

(ii) A pipeline system owned by a gas distribution company or any subsidiary of the gas distribution company, which is regulated by the Michigan public service commission.

(iii) An affiliated pipeline system, if the rates charged by the pipeline system have been approved by the Michigan public service commission, or if the rates charged are reasonable, as compared to independent pipeline systems, based on the pipeline system's location, distance, cost of service, and other pertinent factors.

(2) A lessee shall not charge postproduction costs incurred on gas produced from 1 drilling unit, pooled or communitized area, or unit area against a lessor's royalty for gas produced from another drilling unit, pooled or communitized area, or unit area. As used in this subsection, "unit area" means the formation or formations that are unitized and surface acreage that is a part of the unitized lands, as described in either of the following:

(a) The plan for unit operations that is the subject of the supervisor's order as provided in section 61706.

(b) An applicable agreement providing for unit operations.

(3) If a person who has entered into a gas lease as a lessee prior to or after March 28, 2000 charges the lessor for any portion of postproduction costs, the lessee shall notify the lessor in writing of the availability of the following information and if the lessor requests in writing to receive this information, the lessee shall provide the lessor, in writing, a specific itemized explanation of all postproduction costs to be assessed.

(4) A division order or other document that includes provisions that stipulate how production proceeds are distributed, received by the lessor from the lessee, shall not alter or define the terms of a lease unless voluntarily and explicitly agreed to by both parties in a signed document or documents in which the parties expressly indicate their intention to amend the lease. A lessee shall not precondition the payment of royalties upon the lessor signing a division order or other document that stipulates how production proceeds are distributed, except as provided in this subsection. As a condition for the payment of royalties under a lease other than a lease granted by the state of Michigan, a lessee or other payor shall be entitled to receive a signed division order from the payee containing only the following provisions, unless other provisions have been voluntarily and explicitly agreed to by both parties in a signed document or documents in which the parties expressly indicate their intention to waive the provisions of this subsection:

(a) The effective date of the division order.

(b) A description of the property from which the oil or gas is being produced and the type of production.

(c) The fractional or decimal interest in production, or both, claimed by the payee, the type of interest, the certification of title to the share of production claimed, and, unless otherwise agreed to by the parties, an agreement to notify the payor at least 1 month in advance of the effective date of any change in the interest in production owned by the payee and an agreement to indemnify the payor and reimburse the payor for payments made if the payee does not have merchantable title to the production sold.

(d) The authorization to suspend payment to the payee for production until the resolution of any title dispute or adverse claim asserted regarding the interest in production claimed by the payee.

(e) The name, address, and taxpayer identification number of the payee.

(f) A statement that the division order does not amend any lease or operating agreement between the interest owner and the lessee or operator or any other contracts for the purchase of oil or gas.

History: Add. 1999, Act 246, Eff. Mar. 28, 2000;—Am. 2000, Act 441, Imd. Eff. Jan. 9, 2001.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61503c Violation of MCL 324.61503a or MCL 324.61503b; penalty; injunction or damages; separate offenses; recovery of postproduction costs and attorney fees; notice.

Sec. 61503c. (1) Notwithstanding section 61522, a person who knowingly violates section 61503a or 61503b is responsible for the payment of a civil fine of not more than \$1,000.00. 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.

(2) The attorney general or the lessor of a gas lease with respect to his or her lease may bring an action in circuit court for injunctive relief or damages, or both, against a person who violates section 61503a or 61503b.

(3) If a person who has entered into a gas lease as a lessee violates section 61503a or 61503b, each day the violation continues constitutes a separate offense only for 5 days; thereafter, each day the violation continues does not constitute a separate offense. If a person who has entered into a gas lease as a lessee violates section 61503a or 61503b and such a violation affects more than 1 lessor having an interest in the same well, pooled unit, or unitized area, the violation as to all lessors constitutes only 1 offense.

(4) If a court finds that a lessee deducted postproduction costs from a lessor's royalty contrary to section 61503b(1), the lessor may recover as damages the amount of postproduction costs deducted contrary to section 61503b(1) and may also recover reasonable attorney fees incurred in bringing the action unless the lessee endeavored to cure the alleged violation pursuant to subsection (5) prior to the bringing of the action. In addition, a lessee who prevails in litigation under this subsection may recover reasonable attorney fees incurred in defending an action under this subsection, if the court finds that the position taken by the lessor in the litigation was frivolous.

(5) A person shall not bring an action under this section unless the person has first given the lessee written notice of the alleged violation of section 61503a or 61503b, with reasonably comprehensive details, and allowed a period of at least 30 days for the lessee to cure the alleged violation.

History: Add. 1999, Act 247, Eff. Mar. 28, 2000;—Am. 2000, Act 441, Imd. Eff. Jan. 9, 2001.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61504 Waste prohibited.

Sec. 61504. A person shall not commit waste in the exploration for or in the development, production, handling, or use of oil or gas, or in the handling of any product of oil or gas.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61505 Supervisor of wells; jurisdiction; authority; enforcement of part.

Sec. 61505. The supervisor has jurisdiction and authority over the administration and enforcement of this part and all matters relating to the prevention of waste and to the conservation of oil and gas in this state. The supervisor also has jurisdiction and control of and over all persons and things necessary or proper to enforce effectively this part and all matters relating to the prevention of waste and the conservation of oil and gas.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61505a Drilling permit for well beneath lake bottomlands for exploration or production of oil or gas; condition.

Sec. 61505a. Notwithstanding any other provision of this part or the rules promulgated under this part, beginning on the effective date of this section, the supervisor shall not issue a permit for drilling, or authorize the drilling of, a well beneath the lake bottomlands of the Great Lakes, the connected bays or harbors of the Great Lakes, or the connecting waterways as defined in section 32301, for the exploration or production of oil or gas unless the applicant holds a lease that was in effect prior to the effective date of the amendatory act that added this section that allows the well to be drilled.

History: Add. 2002, Act 148, Imd. Eff. Apr. 5, 2002.

Compiler's note: Enrolled House Bill No. 5118 was not signed by the Governor, but, having been presented to him at 3:44 p.m. on March 22, 2002, and not having been returned by him to the House of Representatives within the 14 days prescribed by Const 1963, art IV, sec 33, became law (2002 PA 148) on April 5, 2002, the Legislature having continued in session.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61506 Supervisor of wells; powers and duties generally.

Sec. 61506. The supervisor shall prevent the waste prohibited by this part. To that end, acting directly or through his or her authorized representatives, the supervisor is specifically empowered to do all of the following:

(a) To promulgate and enforce rules, issue orders and instructions necessary to enforce the rules, and do whatever may be necessary with respect to the subject matter stated in this part to implement this part, whether or not indicated, specified, or enumerated in this or any other section of this part.

(b) To collect data to make inspections, studies, and investigations; to examine properties, leases, papers, books, and records as necessary to the purposes of this part; to examine, check, and test and gauge oil and gas wells and tanks, plants, refineries, and all means and modes of transportation and equipment; to hold hearings; and to provide for the keeping of records and making of reports, and for the checking of the accuracy of the records and reports.

(c) To require the locating, drilling, deepening, re-drilling or reopening, casing, sealing, operating, and plugging of wells drilled for oil and gas or for secondary recovery projects, or wells for the disposal of salt water, brine, or other oil field wastes, to be done in such manner and by such means as to prevent the escape of oil or gas out of 1 stratum into another, or of water or brines into oil or gas strata; to prevent pollution of, damage to, or destruction of fresh water supplies, including inland lakes and streams and the Great Lakes and connecting waters, and valuable brines by oil, gas, or other waters, to prevent the escape of oil, gas, or water into workable coal or other mineral deposits; to require the disposal of salt water and brines and oily wastes produced incidental to oil and gas operations in a manner and by methods and means so that unnecessary damage or danger to or destruction of surface or underground resources, to neighboring properties or rights, or to life does not result.

(d) To require reports and maps showing locations of all wells subject to this part, and the keeping and filing of logs, well samples, and drilling, testing, and operating records or reports. All well data and samples furnished to the supervisor as required in this part, upon written request of the owner of the well, shall be held

confidential for 90 days after the completion of drilling and shall not be open to public inspection except by written consent of the owner.

(e) To prevent the drowning by water of any stratum or part of the stratum capable of producing oil or gas, or both oil and gas, and to prevent the premature and irregular encroachment of water, or any other kind of water encroachment, that reduces or tends to reduce the total ultimate recovery of oil or gas, or both oil or gas, from any pool.

(f) To prevent fires or explosions.

(g) To prevent blow-outs, seepage, and caving in the sense that the conditions indicated by such terms are generally understood in the oil business.

(h) To regulate the mechanical, physical, and chemical treatment of wells.

(i) To regulate the secondary recovery methods of oil and gas, including pulling or creating a vacuum and the introduction of gas, air, water, and other substances into the producing formations.

(j) To fix the spacing of wells and to regulate the production from the wells.

(k) To require the operation of wells with efficient gas-oil ratios and to establish the ratios.

(l) To require by written notice or citation immediate suspension of any operation or practice and the prompt correction of any condition found to exist that causes or results or threatens to cause or result in waste.

(m) To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation of oil, gas, or any product of oil or gas.

(n) To require identification of the ownership of oil and gas producing leases, properties, and wells.

(o) To promulgate rules or issue orders for the classifications of wells as oil wells or gas wells; or wells drilled, or to be drilled, for secondary recovery projects, or for the disposal of salt water, brine, or other oil or gas field wastes; or for the development of reservoirs for the storage of liquid or gaseous hydrocarbons, or for other means of development, extraction, or production of hydrocarbons.

(p) To require the filing of an adequate surety, security, or cash bonds of owners, producers, operators, or their authorized representatives in such reasonable form, condition, term, and amount as will ensure compliance with this part and with the rules promulgated or orders issued under this part and to provide for the release of the surety, security, or cash bonds.

(q) To require the immediate suspension of drilling or other well operations if there exists a threat to public health or safety.

(r) To require a person applying for a permit to drill and operate any well regulated by this part to file a complete and accurate written application on a form prescribed by the supervisor.

(s) To require the posting of safety signs and the installation of fences, gates, or other safety measures if there exists a threat to public health, safety, or property.

(t) To prevent regular or recurring nuisance noise or regular or recurring nuisance odor in the exploration for or development, production or handling of oil and gas.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 303, Imd. Eff. July 28, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

Administrative rules: R 324.101 et seq. of the Michigan Administrative Code.

324.61506a Notice of violation.

Sec. 61506a. Upon completion of an inspection under this part, the supervisor shall notify the owner or operator of the well of any violation of this or any other part of this act that is identified during the inspection.

History: Add. 1998, Act 252, Imd. Eff. July 10, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61506b Conditions prohibiting issuance of permit or authorization to drill oil or gas well; waiver; exception.

Sec. 61506b. (1) Except as provided in subsections (2) and (3), beginning on the effective date of this section, the supervisor shall not issue a permit for or authorize the drilling of an oil or gas well if both of the following apply:

(a) The well is located within 450 feet of a residential building.

(b) The residential building is located in a city or township with a population of 70,000 or more.

(2) The supervisor may grant a waiver from the requirement of subsection (1)(a) if the clerk of the city,

village, or township in which the proposed well is located has been notified of the application for a permit for the proposed well and if either of the following conditions is met:

(a) The owner or owners of all residential buildings located within 450 feet of the proposed well give written consent.

(b) The supervisor determines, pursuant to a public hearing held before the waiver is granted, that the proposed well location will not cause waste and there is no reasonable alternative for the location of the well that will allow the oil and gas rights holder to develop the oil and gas.

(3) Subsection (1) does not apply to a well utilized for the injection, withdrawal, and observation of the storage of natural gas pursuant to this part.

History: Add. 1998, Act 303, Imd. Eff. July 28, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61506c Toll-free telephone number; maintenance; use.

Sec. 61506c. The department shall maintain a toll-free telephone number that a person or a representative of a local unit of government may call in order to receive information on department standards, safety requirements and educational information related to oil and gas exploration, drilling, permitting, hydrogen sulfide management, pooling, and other topics related to the extraction of oil and gas.

History: Add. 1998, Act 392, Imd. Eff. Dec. 17, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61507 Prevention of waste; procedure; hearing; rules; orders.

Sec. 61507. Upon the initiative of the supervisor or upon verified complaint of any person interested in the subject matter alleging that waste is taking place or is reasonably imminent, the supervisor shall call a hearing to determine whether or not waste is taking place or is reasonably imminent, and what action should be taken to prevent that waste. If the supervisor determines it appropriate, the supervisor shall hold a hearing and shall promptly make findings and recommendations. The supervisor shall consider those findings and recommendations and shall promulgate rules or issue orders as he or she considers necessary to prevent waste which he or she finds to exist or to be reasonably imminent.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61508 Rules of order or procedure in hearings or other proceedings; entering in book; copy of rule or order as evidence; availability of writings to public.

Sec. 61508. (1) The supervisor shall prescribe rules of order or procedure in hearings or other proceedings before the supervisor under this part. Rules promulgated or orders issued by the supervisor shall be entered in full in a book to be kept for that purpose by the supervisor. A copy of a rule or order, certified by the supervisor, shall be received in evidence in the courts of this state with the same effect as the original.

(2) A writing prepared, owned, used, in the possession of, or retained by the supervisor 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.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61509 Hearings; subpoena; witnesses and production of books; incriminating testimony.

Sec. 61509. The supervisor may compel by subpoena the attendance of witnesses and the production of books, papers, records, or articles necessary in any proceeding before the supervisor or the commission. A person shall not be excused from obeying a subpoena issued in a hearing or proceeding brought under this part on the ground or for the reason that the testimony or evidence, documentary or otherwise, may tend to incriminate or subject that person to a penalty or forfeiture. However, this section does not require a person to

produce books, papers, or records or to testify in response to any inquiry that is not pertinent to a question lawfully before the supervisor, commission, or court for determination under this part. Incriminating evidence, documentary or otherwise, shall not be used against a witness who testifies as required in this section in a prosecution or action for forfeiture. A person who testifies as required in this section is not exempt from prosecution and punishment for perjury in so testifying.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61510 Failure to comply with subpoena; refusal to testify; attachment; contempt; fees and mileage of witnesses.

Sec. 61510. (1) If a person fails or refuses to comply with a subpoena issued by the supervisor, or if a witness refuses to testify as to any matters regarding which he or she may be lawfully interrogated, any circuit court in this state, or any circuit court judge, on application of the supervisor, may issue an attachment for the person and compel that person to comply with the subpoena and to attend a hearing before the supervisor and produce documents, and testify upon matters, as may be lawfully required, and the court or judge has the power to punish that person for contempt in the same manner as if the person had disobeyed the subpoena of the court or refused to testify in that court.

(2) A witness summoned by subpoena or by written request of the supervisor and attending a hearing called by the supervisor is entitled to the same fees and mileage as are or may be provided by law for attending the circuit court in a civil matter or proceeding. The fees and mileage of witnesses subpoenaed at the instance of the supervisor shall be paid out of the general funds of the state treasury upon proper voucher approved by the supervisor. The fees and mileage of witnesses subpoenaed at the instance of any other interested party shall be paid by that party.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61511 False swearing as perjury; penalty.

Sec. 61511. If a person who is required to give an oath under this part, or by any rule promulgated or order issued by the supervisor, willfully swears falsely in regard to any matter or thing respecting which the oath is required, or willfully makes any false affidavit required or authorized by this part, or by any rule promulgated or order issued by the supervisor, that person is guilty of perjury, punishable by imprisonment for not more than 5 years or less than 6 months.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61512 Allocation or distribution of allowable production in well, field, or pool; basis.

Sec. 61512. If, to prevent waste, the supervisor limits the amount of oil or gas to be produced from any well, pool, or field in this state, the supervisor shall allocate or distribute the allowable production in the field or pool. The supervisor shall make such a determination or distribution in the field or pool on a reasonable basis, giving, if reasonable, under all circumstances, to each small well of settled production in the pool or field an allowable production that will prevent a general or premature abandonment of the wells in the pool or field.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61513 Proration or distribution of allowable production among wells; basis; drilling unit; unnecessary wells; pooling of properties; location of well; exceptions; minimum allowable production; allowable production pursuant to rules or orders.

Sec. 61513. (1) When, to prevent waste, the total allowable production for any oil or gas field or pool in

the state is fixed in an amount less than that which the field or pool could produce if no restriction were imposed, the supervisor shall prorate or distribute on a reasonable basis the allowable production among the producing wells in the field or pool, to prevent or minimize reasonably avoidable drainage from each developed area which is not equalized by counter drainage. The rules or orders of the supervisor, so far as it is practicable to do so, shall afford the owner of each property in a pool the opportunity to produce his or her just and equitable share of the oil or gas in the pool, being an amount, so far as can be practicably determined and obtained without waste, and without reducing the bottom hole pressure materially below the average for the pool, substantially in the proportion that the quantity of the recoverable oil or gas under the property bears to the total recoverable oil or gas in the pool, and for this purpose to use his or her just and equitable share of the reservoir energy. A well in a pool producing from an average depth of 1,000 feet or less, on the basis of a full drilling unit as may be established under this section, shall be given a base allowable production of at least 100 barrels of oil per well per week; for a well in a pool producing from an average depth greater than 1,000 feet, the base allowable production shall be increased 10 barrels per well per week for each addition 100 feet of depth greater than 1,000 feet, if the allowable production is or can be made without surface or underground waste.

(2) To prevent the drilling of unnecessary wells, the supervisor may establish a drilling unit for each pool. A drilling unit, as described in this subsection, is the maximum area that may be efficiently and economically drained by 1 well. A drilling unit constitutes a developed area if a well is located on the drilling unit that is capable of producing the economically recoverable oil or gas under the unit. Each well permitted to be drilled upon any drilling unit shall be located in the approximate center of the drilling unit, or at such other location on the drilling unit as may be necessary to conform to a uniform well spacing pattern as adopted and promulgated by the supervisor after due notice and public hearing, as provided in this part.

(3) The drilling of unnecessary wells is hereby declared waste because unnecessary wells create fire and other hazards conducive to waste, and unnecessarily increase the production cost of oil and gas to the operator, and therefore also unnecessarily increase the cost of the products to the ultimate consumer.

(4) The pooling of properties or parts of properties is permitted, and, if not agreed upon, the supervisor may require pooling of properties or parts of properties in any case when and to the extent that the smallness or shape of a separately owned tract or tracts would, under the enforcement of a uniform spacing plan or proration or drilling unit, otherwise deprive or tend to deprive the owner of such a tract of the opportunity to recover or receive his or her just and equitable share of the oil or gas and gas energy in the pool. The owner of any tract that is smaller than the drilling unit established for the field shall not be deprived of the right to drill on and produce from that tract, if the drilling and production can be done without waste. In this case, the allowable production from that tract, as compared with the allowable production if that tract were a full unit, shall be in the ratio of the area of the tract to the area of a full unit, except as a smaller ratio may be required to maintain average bottom hole pressures in the pool, to reduce the production of salt water, or to reduce an excessive gas-oil ratio. All orders requiring pooling described in this subsection shall be upon terms and conditions that are just and reasonable, and will afford to the owner of each tract in the pooling plan the opportunity to recover or receive his or her just and equitable share of the oil or gas and gas energy in the pool as provided in this subsection, and without unnecessary expense, and will prevent or minimize reasonably avoidable drainage from each developed tract that is not equalized by counter drainage. The portion of the production allocated to the owner of each tract included in a drilling unit formed by voluntary agreement or by a pooling order shall be considered as if it had been produced from the tract by a well drilled on the tract.

(5) Each well permitted to be drilled upon a drilling unit or tract shall be drilled at a location that conforms to the uniform well spacing pattern, except as may be reasonably necessary where after notice and hearing the supervisor finds any of the following:

(a) That the unit is partly outside the pool or that, for some other reason, a well at the location would be unproductive.

(b) That the owner or owners of a tract or tracts covering that part of the drilling unit or tract on which the well would be located if it conformed to the uniform well spacing pattern refuses to permit drilling at the regular location.

(c) That topographical or other conditions are such as to make drilling at the regular location unduly burdensome or imminently threatening to water or other natural resources, to property, or to life.

(6) If an exception under subsection (5) is granted, the supervisor shall take such action as will offset any advantage that the person securing the exception may have over other producers in the pool by reason of the drilling of the well as an exception, and so that drainage from the developed areas to the tract with respect to the exception granted will be prevented or minimized and the producer of the well drilled as an exception will be allowed to produce no more than his or her just and equitable share of the oil or gas in the pool as the share is set forth in this part, and to that end the rules and orders of the supervisor shall be such as will prevent or

minimize reasonably avoidable drainage from each developed area that is not equalized by counter drainage and will give to each producer the opportunity to use his or her just and equitable share of the reservoir energy.

(7) Minimum allowable production for some wells and pools may be advisable from time to time, especially with respect to wells and pools already drilled on May 3, 1939, when former Act No. 61 of the Public Acts of 1939 took effect, so that the production will repay reasonable lifting costs and thus prevent premature abandonment of wells and resulting wastes.

(8) After the effective date of any rule promulgated or order issued by the supervisor as provided in this part establishing the allowable production, a person shall not produce more than the allowable production applicable to that person, his or her wells, leases, or properties, and the allowable production shall be produced pursuant to the applicable rules or orders.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61513a Pooling of properties not required.

Sec. 61513a. The supervisor shall not require the pooling of state owned properties or parts of properties under section 61513 if the state provides for the orderly development of state owned hydrocarbon resources through an oil and gas leasing program and the supervisor determines the owner of each tract is afforded the opportunity to recover and receive his or her just and equitable share of the hydrocarbon resources in the pool.

History: Add. 1998, Act 303, Imd. Eff. July 28, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61514 Certificates of clearance or tenders; issuance.

Sec. 61514. The supervisor may issue certificates of clearance or tenders if required to implement this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61515 Handling or disposition of illegal oil or gas; penalty.

Sec. 61515. A person shall not sell, purchase, acquire, transport, refine, process, or otherwise handle or dispose of any illegal oil or gas or any illegal product of oil or gas. A penalty or forfeiture shall not be imposed as a result of an act described in this section until certificates of clearance or tenders are required by the supervisor as provided in section 61514.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61516 Rule or order; public hearings required; emergency rules or orders without public hearing; requirements for public hearings held pertaining to pooling of properties.

Sec. 61516. (1) A rule or order shall not be made, promulgated, put into effect, revoked, changed, renewed, or extended, except emergency orders, unless public hearings are held. Except as provided in subsection (2), public hearings shall be held at such time, place, and manner and upon such notice, not less than 10 days, as shall be prescribed by general order and rules adopted in conformity with this part. The supervisor may promulgate emergency rules or issue orders without a public hearing as may be necessary to implement this part. The emergency rules and orders shall remain in force and effect for no longer than 21 days, except as otherwise provided for rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) A public hearing held pursuant to this section pertaining to the pooling of properties or parts of properties under section 61513(4) shall be held at a place as determined by this subsection. At the time that the supervisor provides for notice of the public hearing, the supervisor shall provide notice of the right to request a change in location of the public hearing. A public hearing shall be held in the county in which the

oil and gas rights are located if the majority of the owners of oil or gas rights that are subject to being pooled file with the supervisor a written request to hold the hearing in that county.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 115, Imd. Eff. June 9, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61517 Actions against department or commission; jurisdiction of Ingham county circuit court; injunction or restraining order; actions pertaining to pooling of properties.

Sec. 61517. (1) Except as provided in subsection (2), the circuit court of Ingham county has exclusive jurisdiction over all suits brought against the department, the supervisor, or any agent or employee of the department or supervisor, by or on account of any matter or thing arising under this part. A temporary restraining order or injunction shall not be granted in any suit described in this section except after due notice and for good cause shown.

(2) A suit brought against the supervisor pertaining to an order of the supervisor requiring the pooling of properties or parts of properties under section 61513(4) may be brought in the circuit court for the county in which the oil or gas rights are located or in the circuit court of Ingham county. A suit brought in the circuit court of Ingham county against the supervisor pertaining to an order of the supervisor requiring the pooling of properties or parts of properties under section 61513(4) may be removed to the circuit court for the county in which the oil or gas rights are located upon petition by a majority of the owners of the oil and gas rights who are subject to the order. Additionally, if all of the owners of the oil and gas interests being pooled reside in a county in Michigan other than the county in which the oil and gas rights are located, the suit may be brought in, or removed to, the circuit court for the county in which the owners reside. A petition for removal under this subsection shall be filed within 28 days after filing and service of the complaint in circuit court.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 115, Imd. Eff. June 9, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61518 Enforcement of part and rules; representation by attorney general; complaint; proceedings; powers of supervisor; exception.

Sec. 61518. (1) The supervisor may proceed at law or for the enforcement of this part and a rule promulgated under this part or for the prevention of the violation of this part or a rule promulgated under this part, and the attorney general shall represent the supervisor in an action brought under this part. The supervisor or an assistant appointed by the supervisor may file a complaint and cause proceedings to be commenced against a person for a violation of this part without the sanction of the prosecuting attorney of the county in which the proceeding is commenced. The supervisor or an assistant of the supervisor may appear for the people in a court of competent jurisdiction in a case for a violation of this part or a rule promulgated under this part, and prosecute the violation in the same manner and with the same authority as the prosecuting attorney of a county in which the proceeding is commenced, and may sign vouchers for the payment of fees and do all other things required in the same manner and with the same authority as the prosecuting attorney.

(2) Subsection (1) does not apply to a violation of this part that is subject to the penalty prescribed pursuant to section 61522(3) or (4).

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61519 Failure of owner or operator to obtain permit or to construct, operate, maintain, case, plug, or repair well; notice of determination; liability; claims.

Sec. 61519. If the supervisor determines that the owner or operator of a well subject to this part has failed or neglected to properly obtain a permit, construct, operate, maintain, case, plug, or repair the well in accordance with this part or the rules promulgated under this part, the supervisor shall give notice of this determination, in writing, to the owner and operator and to the surety executing the bond filed with the supervisor by the owner or operator in connection with the issuance of the permit authorizing the drilling of a well. This notice of determination may be served upon the owner or operator and surety in person or by registered mail. If the owner or operator cannot be found in the state, the mailing of the notice of

determination to the owner or operator at his or her last known post office address by registered mail constitutes service of the notice of determination. If the owner or operator, or surety, fails or neglects to properly case, plug, or repair the well described in the notice of determination within 30 days of the date of service or mailing of the notice, the supervisor may enter into and upon any private or public property on which the well is located and upon and across any private or public property necessary to reach the well, and case, plug, or repair the well, and the owner or operator and surety are jointly and severally liable for all expenses incurred by the supervisor. The supervisor, acting for and in behalf of the state, shall certify in writing to the owner or operator and surety the claim of the state in the same manner provided in this section for the service of the notice of determination, and shall list thereon the items of expense incurred in casing, plugging, or repairing the well. The claim shall be paid by the owner or operator, or surety, within 30 days, and if not paid within that time the supervisor, acting for and in behalf of the state, may bring suit against the owner or operator, or surety, jointly or severally, for the collection of the claim in any court of competent jurisdiction in the county of Ingham.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61520 Abandoning well without properly plugging; violation of part or rule; penalty; liability of owner; “owner” and “operator” defined.

Sec. 61520. (1) A person who abandons a well without properly plugging the well as provided in this part or the rules promulgated under this part, or, except as provided in section 61522(3) or (4), who violates this part or a rule promulgated under this part, whether as principal, agent, servant, or employee, is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than \$1,000.00 and costs of prosecution, or both. This section does not impose liability upon the owner of land upon which a well is located, unless the property owner is the owner or part owner of the well.

(2) The words “owner” and “operator”, as used in this section and section 61519 mean a person who, by the terms of this part and the rules promulgated under this part, is responsible for the plugging of a well.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61521 Unlawful acts; penalties.

Sec. 61521. (1) A person who, for the purpose of evading this part or of evading a rule promulgated or an order issued under this part, intentionally makes or causes to be made false entry or statement of fact in a report required by this part or by a rule promulgated or an order issued under this part, or who, for that purpose, makes or causes to be made false entry in an account, record, or memorandum kept by a person in connection with this part, or of a rule promulgated or an order issued under this part; or who, for that purpose, omits to make, or causes to be omitted, full, true, and correct entries in the accounts, records, or memoranda, of all facts and transactions pertaining to the interest or activities in the petroleum industry of that person as may be required by the supervisor under authority given in this part or by any rule promulgated or any order issued under this part; is guilty of a felony, punishable by imprisonment for not more than 3 years, or a fine of not more than \$3,000.00, or both.

(2) A person who for the purpose of evading this part or a rule promulgated or an order issued under this part removes from the jurisdiction of the state, or mutilates, alters, or by other means falsifies a book, record, or other paper pertaining to transactions regulated by this part is subject to the penalties prescribed in 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: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61522 Violations of part, rule, or order; penalties.

Sec. 61522. (1) Unless a penalty is otherwise provided for in this part, a person who violates this part or a rule or order promulgated or issued under this part is subject to a penalty of not more than \$1,000.00. Each

day the violation continues constitutes a separate offense. The penalty shall be recovered by an action brought by the supervisor.

(2) A person aiding in the violation of this part or a rule or order promulgated or issued under this part is subject to the same penalties as are prescribed in this section for the person who committed the violation.

(3) If the supervisor arbitrarily and capriciously violates section 61508(2), the supervisor is subject to the penalties prescribed in 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: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61523 Confiscation of illegal oil or gas, oil or gas products, conveyances, and containers; notice; seizure; sale; intervention.

Sec. 61523. All illegal oil or gas, products derived from illegal oil or gas, conveyances used in the transportation of illegal oil or gas or oil or gas products, and containers used in their storage, except railroad tank cars and pipelines, are subject to confiscation, and the supervisor may seize such illegal oil or gas, oil or gas products, conveyances, and containers. The supervisor shall immediately upon such seizure institute a proceeding in rem to confiscate the oil or gas, oil or gas products, conveyances, and containers in the circuit court of the county in which the seizure was made or in the circuit court of Ingham county. Upon commencement of these proceedings, notice shall be given to all known interested persons in the manner as directed by the court. The court, upon finding that the oil or gas, oil or gas products, conveyances, or containers seized are illegal, shall order those items to be sold under the terms and conditions as it directs. Any person claiming an interest in any oil or gas, oil or gas product, conveyance, or container that is seized has the right to intervene in the proceedings, and the rights of that person shall be determined by the court as justice may require.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61524 Fee for monitoring, surveillance, enforcement, and administration of part.

Sec. 61524. (1) For the purposes of monitoring, surveillance, enforcement, and administration of this part, a fee not in excess of 1%, based upon the gross cash market value, is levied upon oil and gas produced in this state. The fee shall be collected by the revenue division of the department of treasury in the same manner, at the same time, and subject to the provisions of the tax levied by 1929 PA 48, MCL 205.301 to 205.317.

(2) The fee shall be computed as follows:

(a) The director of the department of management and budget, on or before November 1, shall certify to the department of treasury the amount appropriated for the fiscal year for the purposes of monitoring, surveillance, enforcement, and administration of this part.

(b) The department shall estimate the total production and gross cash market value of all oil and gas that will be produced in this state during the fiscal year ending September 30, and shall certify its estimate to the department of treasury on or before November 1.

(c) Within 30 days after the effective date of the 1998 amendments to this section and on or before December 1 of each succeeding year, the department of treasury shall determine the fee as follows:

(i) If the fund balance is less than \$7,000,000.00 as of the end of the fiscal year immediately prior to November 1, the fee shall be 1% of the gross cash market value of oil and gas produced, or an amount calculated to cause the fund to accumulate to \$7,000,000.00 at the end of the current fiscal year, whichever is less.

(ii) If the fund balance is equal to or exceeds \$7,000,000.00 as of the end of the fiscal year immediately prior to November 1, the fee shall be the ratio, to the nearest 1/100 of 1%, that the appropriation bears to the total gross cash market value of the oil and gas that will be produced in this state as estimated by the department as provided in subdivision (b).

(iii) Any money accumulated in the fund in excess of \$7,000,000.00 as of the end of the fiscal year shall be deducted from the following year's appropriation in determining an amount to be certified by the director of the department of management and budget to the department of treasury for computing the annual fee provided for in this section.

(d) The percentage determined pursuant to subdivision (c) shall not exceed 1% and shall be the fee beginning the first of the following month and will continue to be the fee for the next 12 months and until a different fee is determined. However, the fee shall be 1% beginning the first day of the second month after the effective date of the 1998 amendments to this section and will continue to be the fee for the remainder of that calendar year.

(3) The proceeds of the fee provided for in this section shall be forwarded to the state treasurer for deposit into the fund.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 252, Imd. Eff. July 10, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61525 Permit to drill well; application; bond; posting; fee; issuance; disposition of fees; availability of information pertaining to applications; information provided to city, village, or township.

Sec. 61525. (1) A person shall not drill or begin the drilling of any well for oil or gas, for secondary recovery, or a well for the disposal of salt water, or brine produced in association with oil or gas operations or other oil field wastes, or wells for the development of reservoirs for the storage of liquid or gaseous hydrocarbons, except as authorized by a permit to drill and operate the well issued by the supervisor of wells pursuant to part 13 and unless the person files with the supervisor a bond as provided in section 61506. The permittee shall post the permit in a conspicuous place at the location of the well as provided in the rules and requirements or orders issued or promulgated by the supervisor. An application for a permit shall be accompanied by a fee of \$300.00. A permit to drill and operate shall not be issued to an owner or his or her authorized representative who does not comply with the rules and requirements or orders issued or promulgated by the supervisor. A permit shall not be issued to an owner or his or her authorized representative who has not complied with or is in violation of this part or any of the rules, requirements, or orders issued or promulgated by the supervisor or the department.

(2) The supervisor shall forward all fees received under this section to the state treasurer for deposit in the fund.

(3) The supervisor shall make available to any person, upon request, not less often than weekly, the following information pertaining to applications for permits to drill and operate:

- (a) Name and address of the applicant.
- (b) Location of proposed well.
- (c) Well name and number.
- (d) Proposed depth of the well.
- (e) Proposed formation.
- (f) Surface owner.
- (g) Whether hydrogen sulfide gas is expected.

(4) The supervisor shall provide the information under subsection (3) to the county in which an oil or gas well is proposed to be located and to the city, village, or township in which the oil or gas well is proposed to be located if that city, village, or township has a population of 70,000 or more. A city, village, township, or county in which an oil or gas well is proposed to be located may provide written comments and recommendations to the supervisor pertaining to applications for permits to drill and operate. The supervisor shall consider all such comments and recommendations in reviewing the application.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 252, Imd. Eff. July 10, 1998;—Am. 1998, Act 303, Imd. Eff. July 28, 1998;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61525a Annual well regulatory fee; report.

Sec. 61525a. The owner or operator of a well used for injection, withdrawal, or observation related to the storage of natural gas or liquefied petroleum gas that has been used for its permitted purpose at any time during the calendar year immediately prior to the time the fee is due is subject to a \$20.00 annual well regulatory fee. The owner or operator of a well described in this section shall file an annual report by January 31 of each year stating the number of wells used for injection, withdrawal, or observation related to the storage of natural gas or liquefied petroleum gas that has been utilized for its permitted purpose during the

previous calendar year. The report shall include a list of wells identified by permit number, permit name, and gas storage field name on a form provided by the supervisor, or such other form which may be acceptable to the supervisor. The annual well regulatory fee described in this section is due not more than 30 days after the supervisor sends notice to the owner or operator of the amount due. The supervisor shall forward all fees collected under this section to the state treasurer for deposit into the fund.

History: Add. 1998, Act 252, Imd. Eff. July 10, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61525b Oil and gas regulatory fund; creation; disposition of money or other assets; lapse; expenditures; annual report.

Sec. 61525b. (1) The oil and gas regulatory 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 monitoring, surveillance, enforcement, and administration of this part.

(5) The department shall annually submit a report to the legislature that itemizes the expenditure of money in the fund. The report shall include, at a minimum, all of the following:

(a) The amount of money received and the amount of money expended.

(b) The number of full-time equivalent positions funded with money in the fund.

(c) The number of on-site inspections conducted by the department in implementing this part.

(d) The number of violations identified in enforcing this part, their locations, and a description of the nature of the violations.

History: Add. 1998, Act 252, Imd. Eff. July 10, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61526 Part cumulative; conflicting provisions repealed; exception.

Sec. 61526. This part is cumulative of all existing laws on the subject matter, but, in case of conflict, this part shall control and shall repeal the conflicting provisions, except for the authority given the public service commission in sections 7 and 8 of Act No. 9 of the Public Acts of 1929, being sections 483.107 and 483.108 of the Michigan Compiled Laws, as authorized by law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61527 Applicability of part.

Sec. 61527. This part does not apply to drill holes for the exploration for and the extraction of iron, copper, or brine; to water wells; to mine and quarry drill and blast holes; to coal test holes; or to seismograph or other geophysical exploration test holes.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

PART 616 ORPHAN WELL FUND

324.61601 Definitions.

Sec. 61601. As used in this part:

(a) "Abandoned oil or gas well" means an oil or gas well that has not been plugged promptly after having

been drilled as a dry hole or has not been used for its intended purpose during 12 consecutive months, unless the supervisor has authorized it to remain idle.

(b) "Fund" means the orphan well fund created in section 61602.

(c) "Oil or gas well" means a well drilled pursuant to part 615, or its predecessor acts, or a well drilled prior to the effective dates of part 615 or its predecessor acts as determined by the supervisor, for oil or gas exploration or development or storage, or associated production or disposal activities.

(d) "Operator" means the person authorized by contract or agreement by the owner to drill, operate, maintain, or plug a well. Operator does not include the operator of a natural gas storage field within the boundary of the natural gas storage field unless the natural gas storage field operator has either drilled, plugged, or replugged the well in question or has utilized the well for the injection or withdrawal of natural gas into or from the natural gas storage field.

(e) "Owner" means the person who has the right to drill a well into a pool, to produce from a pool, and to receive and distribute the value of the production from the pool for himself or herself either individually or in combination with others.

(f) "Response activity" has the same meaning as in part 201.

(g) "Site restoration" means the filling and leveling of all cellars, pits, and excavations; the removal or elimination of all debris; the elimination of conditions that may create a fire or pollution hazard; the minimization of erosion; and the restoration of the well site as nearly as practicable to the original land contour or to a condition approved by the supervisor after consulting with the surface owner of the land and with the operator of a natural gas storage field if the well site is within the boundary of a natural gas storage field.

(h) "Supervisor" means the supervisor of wells as provided by part 615 or his or her designee.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61602 Orphan well fund; creation; disposition of assets.

Sec. 61602. (1) The orphan well 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.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61603 Expenditures from fund; consultation with operator.

Sec. 61603. (1) The supervisor shall expend money from the fund, upon appropriation, only for the following purposes:

(a) For plugging of abandoned or improperly closed oil or gas wells or response activity or site restoration at oil or gas wells for which no owner or operator is known, for which all owners or operators are insolvent, or at which the supervisor determines there exists an imminent threat to the public health and safety.

(b) For the reasonable cost of the supervisor for internal administration in connection with the activities included in subdivision (a).

(2) The supervisor shall consult with the operator of a natural gas storage field prior to plugging any abandoned or improperly closed oil or gas wells within the boundary of the storage field operator's natural gas storage field.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61604 List to be submitted to legislature; annual appropriation from fund for listed projects.

Sec. 61604. (1) By January 1 of each year, the supervisor shall prepare and submit to the legislature a list of the oil or gas wells that should be plugged and those at which response activities or site restoration should be performed with money in the fund. The list shall be compiled in order of priority. The list shall be accompanied by estimates of total project costs for the proposed plugging, response activity, site restoration,

internal administration, and potential emergency contingencies. Additionally, the supervisor shall include with the list a statement of the criteria used in listing and assigning the priority of these proposed actions.

(2) The legislature shall annually appropriate money from the fund for projects on the list prepared under subsection (1) and for sites where there exists an imminent threat to public health and safety. Except for sites where there exists an imminent threat to public health and safety, projects shall be funded in the order of their priority on the list.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61605 Action by attorney general against well owner or operator; recovery of money expended.

Sec. 61605. Following the expenditure of money from the fund pursuant to section 61603(1)(a), the attorney general may bring an action against a person who was the owner or operator of the well at the time that the condition arose requiring expenditure of money from the fund, to recover from that owner or operator the amount of money expended from the fund for which the owner or operator is liable. Money recovered under this section shall be deposited into the fund.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61606 Sale of equipment.

Sec. 61606. The supervisor may sell the well pipe and any other equipment related to an abandoned or improperly closed well as to which there is an expenditure of money from the fund. The proceeds of sale shall be credited to the fund.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61607 Report to legislature of expenditures.

Sec. 61607. By December 31 of each year, the supervisor shall prepare and submit to the legislature a report that details expenditures from the fund for the preceding fiscal year.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 617 UNITIZATION

324.61701 Definitions.

Sec. 61701. As used in this part, unless the context otherwise requires:

(a) "Field" means an underground reservoir or reservoirs containing oil or gas, or both. Field also includes the same general surface area that is underlaid or appears to be underlaid by at least 1 pool. Field and pool have the same meaning if only 1 underground reservoir is involved. However, field, unlike pool, may relate to 2 or more pools.

(b) "Lessee" means lessees under oil and gas leases and also the owners of unleased lands or mineral rights having the right to develop them for oil and gas.

(c) "Oil and gas" means oil and gas as such in combination one with the other and also means oil, gas, casinghead gas, casinghead gasoline, gas distillate, or other hydrocarbons, or any combination or combinations of these substances, which may be found in or produced from a common source of supply of oil, gas, oil and gas, or gas distillate.

(d) "Pool" or "common source of supply" means a natural underground reservoir containing or appearing to contain a common accumulation of oil and gas. Each productive zone of a general structure that is completely separate from any other zone in the structure, or that may for the purposes of this part be declared by the supervisor to be completely separate, is included in the term pool or common source of supply. Any reference to a separately owned tract, although in general terms broad enough to include the surface and all underlying common sources of supply of oil and gas, shall have reference thereto only in relation to the common source of supply or portion thereof included within the unit area of a particular unit.

(e) “Supervisor” or “supervisor of wells” means the department as provided in part 615.

(f) “Unit area” means the formation or formations that are unitized and surface acreage that is a part of the unitized lands, as described in the plan for unit operations that is the subject of the supervisor's order as provided in section 61706.

(g) “Unit expense” means any and all cost, expense, or indebtedness incurred by the unit in the establishment of its organization or incurred in the conduct and management of its affairs or the operations conducted by it.

(h) “Unit production” means all indigenous oil and gas produced and saved from a unit area after the effective date of the order of the supervisor creating the unit, regardless of the well or tract within the unit area from which that oil and gas is produced.

(i) “Waste”, in addition to its ordinary meaning, means physical waste as that term is generally understood in the oil and gas industry. Waste includes all of the following:

(i) The inefficient, excessive, or improper use or dissipation of reservoir energy and the locating, spacing, drilling, equipping, operating, producing, or plugging of any oil and gas well or wells in a manner that results or tends to result in reducing the quantity of oil and gas ultimately recoverable from any pool in the state under good oil and gas field practice.

(ii) The inefficient production of oil and gas in a manner that causes or tends to cause unnecessary or excessive surface loss or destruction of oil and gas.

(iii) The locating, spacing, drilling, equipping, operating, producing, or plugging of a well or wells in a manner that causes or tends to cause unnecessary or excessive loss or destruction of oil and gas.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61702 Supervisor of wells; general duties; fees.

Sec. 61702. Subject to the limitations of this part, the supervisor shall make and enforce such orders, rules, and regulations and do such things as may be necessary or proper to carry out and effectuate the purposes of this part, including adoption of a schedule of fees to be paid upon the filing of petitions, amendments to petitions, and other instruments in connection with petitions that bear reasonable relation to the cost of examining, inspectional, and supervisory services required under this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61703 Petition; filing; contents.

Sec. 61703. Any interested lessee may file a verified petition with the supervisor requesting an order for the unit operation of a pool, pools, or parts of 1 or more pools. The petition shall contain all of the following:

(a) A description of the proposed unit area containing the pool, pools, or parts of 1 or more pools to be operated.

(b) The names of all persons owning or having an interest in oil and gas in the proposed unit area and the names of all surface owners in the proposed unit area, as disclosed by the records in the office of the register of deeds for the county in which the unit area is situated, and their addresses, if known. If the address of any person is unknown, the petition shall state that information.

(c) A statement of the type of the operations contemplated in order to comply with this part.

(d) A recommended plan of unitization applicable to the proposed unit area which the petitioner considers fair, reasonable, and equitable.

(e) A verified statement indicating in detail what action the petitioner has taken to contact and obtain the approval of all persons of record owning or having an interest in oil and gas in the proposed unit area who have not approved the proposed plan of unitization. If the question of whether the plan for unit operations has been approved as provided for in section 61706 is to be considered at a supplemental hearing pursuant to section 61707, this verified statement need not be part of the petition and may be filed separately prior to the supplemental hearing.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2016, Act 316, Imd. Eff. Nov. 3, 2016.

Popular name: Act 451

Popular name: NREPA

324.61704 Notice to interested persons; contents; notice of protest; order.

Sec. 61704. (1) Upon the filing of a petition as provided in section 61703, the petitioner shall give notice to

interested persons as set forth in section 61727. A person protesting the petition shall have 15 days after the completion of the publication of notice as provided in section 61726 to provide the supervisor with written notice of protest and the reason or reasons for the protest.

(2) The notice to interested persons required by subsection (1) shall set forth the procedure required to file a protest and the name, address, and phone number of a representative of the petitioner who is available to discuss the petition, and shall state that the supervisor may issue an order approving the petition without a hearing if no protests are received in the time period provided in subsection (1). The notice to all mineral owners who have not approved the plan of unitization shall include a copy of the petition provided for in section 61703, except that the petitioner may omit from the notice those parts of the petition referred to in section 61703(b) and (e).

(3) If no protests are filed, the supervisor may issue an order as provided in subsection (4) without holding a hearing.

(4) The supervisor shall issue an order providing for the unit operation of a unit area if he or she finds all of the following:

(a) That the unitization requested is reasonably necessary to substantially increase the ultimate recovery of oil and gas from the unit area.

(b) That the type of operations contemplated by the plan are feasible, will prevent waste, and will protect correlative rights.

(c) That the estimated additional cost of conducting such operations will not exceed the value of the additional oil and gas so recovered.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61705 Order for unit operations; terms and conditions; plan for operations.

Sec. 61705. The order of the supervisor shall be upon terms and conditions that are fair, reasonable, and equitable and shall prescribe a plan for unit operations that includes all of the following:

(a) A description of the unit area.

(b) A statement in reasonable detail of the operations contemplated.

(c) An allocation to the separately owned tracts in the unit area of all the oil and gas that is produced from the unit area and is saved, excepting that production that is used in the conduct of operations on the unit area or unavoidably lost. A separately owned tract's fair, reasonable, and equitable share of production shall be measured by the value of the tract for oil and gas purposes and its contributing value to the unit in relation to like values of all tracts in the unit.

(d) The manner in which the unit and the further development and operation of the unit area shall or may be financed and the basis, terms, and conditions on which the cost and expense shall be apportioned among and assessed against the tracts and interests made chargeable therewith, including a detailed accounting procedure governing all charges and credits incident to the operations.

(e) Provisions for carrying or otherwise financing a person who elects to be carried or otherwise financed, allowing a reasonable interest and service charge payable out of the person's share of production.

(f) The procedure and basis upon which wells, equipment, and other properties of the several lessees within the unit area are to be taken over and used for unit operations, including the method of arriving at the compensation therefor.

(g) Provisions for supervision and conduct of the unit operations, in respect to which each person shall have a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the interest of the person.

(h) The time when the plan of unitization becomes effective and when unit operations commence.

(i) The time when, conditions under which, and method by which the unit shall be dissolved and its affairs wound up.

(j) Additional provisions that are found to be appropriate for carrying on the unit operations and for the protection and adjustment of correlative rights.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61706 Effective date of order; finding.

Sec. 61706. An order of the supervisor providing for unit operations shall not be declared or become effective until the supervisor makes a finding, either in the order providing for unit operations or in a

supplemental order as provided in section 61707, that the plan for unit operations has been approved in writing in 1 of the following ways:

(a) By those persons who under the supervisor's order will be required to pay at least 51% of the costs of unit operation, and also by those persons who under the supervisor's order will be entitled to at least 51% of the production from the unit area or the proceeds of that production that will be credited to interests that are free of cost, including, but not limited to, royalties, overriding royalties, and production payments.

(b) By those persons who under the supervisor's order will be entitled to at least 75% of all production from the unit area or the proceeds of that production, provided that among those persons there must be persons who under the supervisor's order will be entitled to at least 50% of the production from the unit area or the proceeds of that production that will be credited to interests that are free of cost, including, but not limited to, royalties, overriding royalties, and production payments.

(c) By those persons who under the supervisor's order will be entitled to at least 65% of all production from the unit area or the proceeds of that production.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2016, Act 316, Imd. Eff. Nov. 3, 2016.

Popular name: Act 451

Popular name: NREPA

324.61707 Supplemental hearings and orders; ineffective order; time.

Sec. 61707. If a finding is not made as set forth in section 61706 at the time the order for unit operations is made, the supervisor on the supervisor's motion or the motion of any interested person after notice shall hold supplemental hearings to determine if the plan for unit operations has been approved. If the written approval is found, then the supervisor shall make a supplemental order declaring the plan effective and setting forth the date for the commencement of unit operations. If the written approval is not found within a period of 6 months from the date on which the order providing for unit operations is made, the order shall be ineffective and shall be revoked by the supervisor unless for good cause shown the supervisor extends the time for an additional period not to exceed 1 year.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61708 Amendment of orders; approval; limitations.

Sec. 61708. An order providing for unit operations may be amended by an order made by the supervisor in the same manner and subject to the same conditions as an original order for unit operations. If an amendment affects only the rights and interests of those persons responsible for the payment of the costs of unit operations, only 75% of these persons shall be required to effectuate amendment. If an amendment in whole or in part changes the percentage of allocation of cost, then the consent of all these persons is required. An amendment shall not change the percentage for the allocation of oil and gas as established for any separately owned tract without the consent of all persons entitled to receive the allocation.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61709 Signed writings; admissible as evidence.

Sec. 61709. Writings containing signatures that are witnessed and acknowledged in a form acceptable for recording under the laws of this state shall be admissible under this part and shall be considered prima facie evidence in fulfillment of requirements of this part that call for written approval.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61710 Unit area embracing previously established area.

Sec. 61710. The supervisor by order may provide for the unit operation of a unit area that embraces a unit area established by a previous order. The order in providing for the allocation of unit production first shall treat the unit area previously established as a single tract, and the portion of the unit production so allocated thereto shall then be allocated among the separately owned tracts included in the previously established unit area in the same proportions as those specified in the previous order.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61711 Unit area less than whole pool.

Sec. 61711. An order may provide for a unit area less than the whole of a pool if the unit area is of such size or shape as may be reasonably adaptable to unit operation and if the conduct of that unit area will not have a substantially adverse effect upon other portions of the pool, whether unitized or not.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61712 Operations upon unit area considered operation on separate tracts.

Sec. 61712. All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of the unit area, shall be considered for all purposes the conduct of those operations upon each separately owned tract itself, and the portion of the unit production allocated to a separately owned tract shall be considered for all purposes to have been actually produced from the tract by a well drilled on that tract.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61713 Lease obligations; effect on unit operation.

Sec. 61713. Operations conducted pursuant to an order of the supervisor for unit operations constitute a fulfillment of all the express and implied obligations of each lease or contract covering lands in the unit area to the extent that compliance with the obligations cannot be had because of the order of the supervisor.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61714 Order for unit operation not to affect title; property; acquisition.

Sec. 61714. Except to the extent that the parties specifically agree otherwise, an order for unit operations shall not be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations shall be acquired for the account of the persons to whom its cost is allocated, and in that proportion subject to any lien the unit may have thereon to secure payment of unit expense.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61715 Unit; legal powers; operator of unit; powers.

Sec. 61715. Each unit created under this part, if the plan provides, shall, through its operator, be capable of suing, being sued, and contracting as such in its own right. The operator of the unit, on behalf and for the account of all owners of interest within the unit area, without profit to the unit, may supervise, manage, and conduct further development and operations for the production of oil and gas from the unit area under the authority and limitations of the order creating it.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61716 Operation of well without authority prohibited.

Sec. 61716. After the effective date of the order of the supervisor creating a unit, the operation of any well within the unit area except by authority of and pursuant to the order of the supervisor is unlawful and prohibited.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61717 Property rights as amended or modified.

Sec. 61717. Property rights, leases, contracts, and all other rights and obligations shall be regarded as amended and modified to the extent necessary to conform to the provisions and requirements of this part and to any valid and applicable plan of unitization or order of the supervisor made pursuant to this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61718 Lien for costs; responsibility for costs; subrogation.

Sec. 61718. Subject to reasonable limitations as set out in the plan of unitization, the unit shall have a first and prior lien for costs incurred pursuant to the plan of unitization upon the leasehold estate and other oil and gas rights, exclusive of a 1/8 share of gross production that is attributable to a lessor's royalty interest, in and to each separately owned tract, and the interest of the owners thereof in and to the unit production and equipment in possession of the unit, in the form and manner as provided in Act No. 146 of the Public Acts of 1937, being sections 570.251 to 570.266 of the Michigan Compiled Laws. The interest of the person who by lease, contract, or otherwise is responsible for the cost of developing and operating a given portion of the unit area in the absence of unitization is primarily responsible for costs as allocated by the plan of unitization, and resort may be had to the entire 7/8 of gross production, including, but not limited to, overriding royalties, oil and gas payments, and royalty interests in excess of 1/8 of gross production but which would not otherwise be responsible for allocated costs, only if the person primarily responsible fails to pay the allocated costs pursuant to the unit plan. Persons whose allowable share of production is made secondarily responsible under this section to the extent that their interest is foreclosed are subrogated to all of the rights of the unit to the interest or interests primarily responsible.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61719 Lessee's obligation; liability.

Sec. 61719. The obligation or liability of each lessee in the several separately owned tracts for the payment of unit expense at all times is several and not joint or collective and a lessee of the oil or gas rights in the separately owned tract is not chargeable with, obligated, or liable, directly or indirectly, for more than the amount apportioned, assessed, or otherwise charged to his or her interest in the separately owned tract pursuant to the plan of unitization.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61720 Allocation of unit production.

Sec. 61720. The portion of the unit production allocated to any tract and the proceeds from the sale of that unit production are the property and income of the several persons to whom or to whose credit the same are allocated or payable under the order for unit operations.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61721 Division order or contract not affected by unit order.

Sec. 61721. A division order or other contract relating to the sale or purchase of production from a separately owned tract shall not be terminated by the order for unit operations, but shall remain in force and apply to oil and gas allocated to the tract until terminated pursuant to the provisions of the division order or contract.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61722 Unit production or proceeds not income of unit; unit as administrative agent only.

Sec. 61722. The unit production, proceeds from the sale of the unit production, or other receipts shall not be treated, regarded, or taxed as income or profits of the unit; but instead all receipts shall be the income of the several persons to whom or to whose credit the receipts are payable under the plan of unitization. To the extent the unit may receive or disburse the receipts, it shall do so only as a common administrative agent of

the person to whom the receipts are payable.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61723 Agreements in restraint of trade prohibited.

Sec. 61723. An agreement between or among lessees or other owners of oil and gas rights in oil and gas properties entered into pursuant to this part, or with a view to or for the purpose of bringing about the unitized development or operation of the properties, shall not violate any of the statutes of this state prohibiting monopolies or acts, arrangements, contracts, combinations, or conspiracies in restraint of trade or commerce.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61724 Consent to or participation in plan or program of unitization by governmental subdivision or agency.

Sec. 61724. The department or other proper board or officer of the state having the control and management of state land and the proper board or officer of any political, municipal, or other subdivision or agency of the state, on behalf of the state or of the political, municipal, or other subdivision or agency of the state, with respect to land or oil and gas rights subject to the control and management of that respective board, body, or officer, may consent to or participate in any plan or program of unitization initiated or adopted under this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61725 Rules, regulations, or orders; public hearings; notice.

Sec. 61725. Except as provided in section 61704, rules, regulations, or orders shall not be made, promulgated, put into effect, revoked, changed, renewed, or extended, unless public hearings are held thereon. Public hearings shall be held at such time, place, and manner and upon notice, not less than 20 days, as provided for in this part or by rules promulgated under this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61726 Hearings; jurisdictional requirements of notice.

Sec. 61726. Jurisdictional requirements of notice of time, place, and issues involved for all hearings required by this part, except proceedings for criminal or civil enforcement of this part, are satisfied by:

(a) Publication once each week for 2 weeks consecutively in a newspaper of general circulation in the county in which the unit area or any portion of the unit area is located if the date of last publication is at least 20 days prior to the date set for the hearing.

(b) Publication at least 20 days prior to the date set for the hearing in a trade journal, periodical, or newsletter or paper, or commercially available scout report, in general circulation in exploratory and developmental branches of the oil and gas industry in this state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61727 Service of notice; filing receipts; filing undelivered notices; filing affidavit of service.

Sec. 61727. (1) Service of the notice described in section 61704(2), which is provided as a matter of public policy and not as a requirement of jurisdiction, before the date of the first publication of notice provided for in section 61726 by personal service or by certified mail, with return receipts requested, shall be provided to the last known address of the following interested persons:

(a) The last owner of record of the oil and gas mineral interests underlying the lands or areas directly affected by the proposed action, and of the surface owners.

(b) The last owner of record of the oil and gas mineral interests underlying the lands or areas immediately adjacent to, and contiguous to, the lands or areas directly affected by the proposed action, and of the surface

owners.

(c) The last owner of record of oil and gas leases from 1 or more owners described in subdivision (a) or (b).

(2) Receipts returned following delivery by certified mail shall be filed with the supervisor on or before the date of the hearing, or before the supervisor's order is issued if there is no hearing.

(3) Undelivered notices that are returned to the petitioner shall be filed with the supervisor on or before the date of the hearing, or before the supervisor's order is issued if there is no hearing.

(4) If notice is given by personal service, an affidavit of service shall be filed with the supervisor on or before the date of the hearing, or before the supervisor's order is issued if there is no hearing.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61728 Compliance with MCL 24.201 to 24.328; persons authorized to conduct hearings and other actions.

Sec. 61728. Except as otherwise expressly provided in this part, all proceedings under this part, including the filing of petitions, the giving of notices, the conduct of hearings, and other action taken by the supervisor or the supervisor's agents shall be 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. All hearings and other actions in connection with the hearings may be conducted by the supervisor, or by the supervisor's deputy or by any authorized representative duly designated by the supervisor, and all acts of his or her deputy or authorized representative have the same force and effect as if done by the supervisor.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61729 Appellant to comply with order, rule, or regulation; bond.

Sec. 61729. During the pendency of the appeal, the appealing party shall obey the order, rule, or regulation appealed unless the interests sought to be protected by the order, rule, or regulation can be adequately protected by a bond, in which case the supervisor may accept a bond in the amount and on the conditions he or she may prescribe in lieu of immediate performance of the order, rule, or regulation by the appealing party.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61730 Judicial review.

Sec. 61730. The action of the supervisor shall be final with respect to jurisdiction for an appeal before any regulatory agency of this state, but any person may seek relief before the commission or in the courts as provided under the laws of the state, and the taking of an appeal as provided in this part is not a prerequisite to seeking relief in the courts. The place of initiation of proceedings for review shall be limited to the circuit court of the county of Ingham, which shall have exclusive jurisdiction of all suits brought against the supervisor or any agent or employee of the supervisor, on account of any matter arising under this part. A temporary restraining order or injunction shall not be granted in any such suit except after due notice and upon a showing of irreparable harm by the appealing party.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61731 Subpoena of witnesses and documentary evidence; incriminating evidence; perjury.

Sec. 61731. The supervisor may compel by subpoena the attendance of witnesses or the production of books, papers, records, or articles necessary in any proceeding before the supervisor. A person shall not be excused from obeying any subpoena for the reason that the testimony or evidence, documentary or otherwise, may tend to incriminate him or her or subject him or her to a penalty or forfeiture. Nothing in this part shall be construed as requiring any person to produce anything or to testify in response to inquiry not pertinent to some question lawfully before the supervisor or any court for determination within the purposes of this part. Any incriminating evidence, documentary or otherwise, shall not thereafter be used against the witness in a prosecution or action for forfeiture. A person testifying is not exempt from prosecution and punishment for

perjury in so testifying.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61732 Failure or refusal to comply with subpoena; refusal to testify or answer; penalty.

Sec. 61732. In case of failure or refusal on the part of any person to comply with any subpoena issued by the supervisor, or the refusal of any witness to testify or answer as to any matters regarding which he or she may be lawfully interrogated, any circuit court in this state or any circuit court judge on application of the supervisor may issue an attachment for the person and compel him or her to comply with such subpoena and to attend before the supervisor or any court and produce such documents and give his or her testimony upon such matters as may be lawfully required, and the court or judge may punish for contempt as in case of disobedience of a like subpoena issued by or from such court or a refusal to testify before that court.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61733 Fees and travel expense of witnesses.

Sec. 61733. Any witness summoned by subpoena or by written request of the supervisor and attending any hearing called by the supervisor is entitled to the same fees and travel expense as provided by law for attending the circuit court in any civil matter or proceeding. The fees and travel expense of witnesses subpoenaed at the instance of the supervisor shall be paid by the persons filing the petition.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61734 Witnesses; false swearing or affidavit; penalty.

Sec. 61734. If any person of whom an oath is required under this part, or by any rule, regulation, or order of the supervisor, willfully swears falsely in regard to any matter or thing respecting which the oath is required, or willfully makes any false affidavit required or authorized by this part, or by any rule, regulation, or order of the supervisor, the person is guilty of perjury.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61735 Enforcement of part.

Sec. 61735. The supervisor may bring proceedings for the enforcement of this part and all rules and regulations promulgated under this part or for the prevention of the violation thereof, and the attorney general shall represent the supervisor in all actions brought under this part. The circuit court of Ingham county shall have concurrent jurisdiction over such matters.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61736 Violation of part; penalty.

Sec. 61736. A person who violates this part or any rule, regulation, or order promulgated under this part is subject to a penalty of not more than \$1,000.00, and each day a violation continues after notice by the supervisor constitutes a separate offense. The penalty shall be recovered by suit brought by the supervisor. Any penalty assessed under this section shall be credited to the general fund.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61737 Violation of part; aiding or abetting; penalty.

Sec. 61737. A person aiding or abetting in the violation of this part, or any rule, regulation, or order made under this part, is subject to the same penalties as are prescribed in this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61738 Orders of supervisor; recording; notice.

Sec. 61738. A certified copy of any order of the supervisor issued under this part is entitled to be recorded in the office of the register of deeds for the counties where all or any portion of the unit area is located, and such recordation shall constitute notice to all persons in interest, their heirs, successors, and assigns.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 619

DRILLING IN THE PIGEON RIVER STATE FOREST

324.61901 Legislative findings.

Sec. 61901. (1) The legislature finds that it is in the public interest to encourage and promote safe, effective, efficient, and environmentally prudent extraction of hydrocarbon resources in the Pigeon river country state forest; and that economic benefits to the state will result from the exploration for the production of energy resources due to the taxation of production of hydrocarbon deposits and the payment of royalties to the state from production of hydrocarbon deposits, which royalties among other things enable the state to acquire and develop property for the enjoyment of the outdoor recreationists of the state.

(2) The legislature further finds that wise use of our natural resources essential for future energy needs requires that energy resource development must occur in harmony with environmental standards; and that the development of new industry and the expansion of existing industry to obtain the optimum safe production of the state's energy resources is an important concern to the economic stability of this state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61902 Pigeon river country state forest as valuable public resource; production of oil and gas in public interest; amended stipulation and consent order as hydrocarbon development plan.

Sec. 61902. The Pigeon river country state forest as dedicated by the commission on December 7, 1973, is a valuable public resource. It is in the public interest to produce oil and gas as quickly as possible to minimize the duration of activities associated with hydrocarbon development in the Pigeon river country state forest. To expedite the development of oil and gas resources on certain lands presently under lease but undeveloped as of March 31, 1981 and for which the amended stipulation and consent order has been adopted and approved by the commission on November 24, 1980, and in consideration of the protracted nature of the controversy, the legislature finds that this amended stipulation and consent order constitutes an appropriate hydrocarbon development plan for the purposes and within the intent expressed in section 61901.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61903 Hydrocarbon activities not in violation of law.

Sec. 61903. The hydrocarbon activities within the Pigeon river country state forest authorized by the plan referred to in section 61902 can be carried out without violation of law under terms of the amended stipulation and consent order referred to in section 61902.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61904 Implementation of hydrocarbon development plan.

Sec. 61904. In light of the legislative findings in section 61901, the declaration of public interest in section 61902, and the determination that hydrocarbons can be developed in concert with law in section 61903, the department shall implement the approved hydrocarbon development plan for the Pigeon river country state forest not later than January 1, 1981.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 621
INTERSTATE OIL AND GAS COMPACT

324.62101 Interstate compact for conservation of oil and gas; extension agreements; withdrawal.

Sec. 62101. So that the state of Michigan can cooperate with other states in fostering and encouraging the production of oil and gas without waste, the governor of the state of Michigan is hereby authorized and empowered, for and in the name of the state of Michigan, now a member of the interstate oil and gas compact commission, to execute agreements for the extension of the interstate compact to conserve oil and gas, originally executed at Dallas, Texas, on the sixteenth day of February 1935, and now deposited with the department of state of the United States, and which expires by its terms on September 1, 1947. The governor is further authorized and empowered to execute any necessary agreements for the further extension of the expiration date of said interstate compact to conserve oil and gas, and to determine if and when it shall be for the best interest of the state of Michigan to withdraw from the compact upon 60 days' notice as provided by its terms. In the event he or she shall determine that the state should withdraw, he or she shall have full power and authority to give notice and take any and all steps necessary and proper to effect the withdrawal of the state of Michigan from the compact.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62102 Interstate oil and gas compact; agreement.

Sec. 62102. The interstate compact to conserve oil and gas referred to in the above section, and which it is hereby proposed to extend by agreement reads as follows:

“AN INTERSTATE COMPACT TO CONSERVE OIL AND GAS”

“ARTICLE I.

This agreement may become effective within any compacting state at any time as prescribed by that state, and shall become effective within those states ratifying it whenever any 3 of the states of Texas, Oklahoma, California, Kansas, and New Mexico have ratified and congress has given its consent. Any oil-producing state may become a party hereto as hereinafter provided.

ARTICLE II.

The purpose of this compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

ARTICLE III.

Each state bound hereby agrees that within a reasonable time it will enact laws, or if laws have been enacted, then it agrees to continue the same in force, to accomplish within reasonable limits the prevention of:

- (a) The operation of any oil well with an inefficient gas-oil ratio.
- (b) The drowning with water of any stratum capable of producing oil or gas, or both oil and gas in paying quantities.
- (c) The avoidable escape into the open air or the wasteful burning of gas from a natural gas well.
- (d) The creation of unnecessary fire hazards.
- (e) The drilling, equipping, locating, spacing, or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof.
- (f) The inefficient, excessive, or improper use of the reservoir energy in producing any well.

The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.

ARTICLE IV.

Each state bound hereby agrees that it will, within a reasonable time, enact statutes, or if such statutes have been enacted, then that it will continue the same in force, providing in effect that oil produced in violation of its valid oil and/or gas conservation statutes or any valid rule, order, or regulation promulgated thereunder, shall be denied access to commerce; and providing for stringent penalties for the waste of either oil or gas.

ARTICLE V.

It is not the purpose of this compact to authorize the states joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or create or perpetuate monopoly, or to promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

ARTICLE VI.

Each state joining herein shall appoint 1 representative to a commission hereby constituted and designated as the interstate oil compact commission, the duty of which said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances, and conditions as may be disclosed for bringing about conservation and the prevention of physical waste of oil and gas, and at such intervals as said commission deems beneficial, it shall report its findings and recommendations to the several states for adoption or rejection.

The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserves of said states and to recommend measures for the maximum ultimate recovery of oil and gas. Said commission shall organize and adopt suitable rules and regulations for the conduct of its business.

No action shall be taken by the commission except: (1) By the affirmative votes of the majority of the whole number of the compacting states, represented at any meeting, and (2) by a concurring vote of majority in interest of the compacting states at said meeting, such interest to be determined as follows: Such vote of each state shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half-year to the daily average production of the compacting states during said period.

ARTICLE VII.

No state by joining herein shall become financially obligated to any other state, nor shall the breach of the terms hereof by any state subject such state to financial responsibility to the other states joining herein.

ARTICLE VIII.

This compact shall expire September 1, 1947, but any state joining herein may, upon 60 days' notice, withdraw herefrom.

The representatives of the signatory states have signed this agreement in a single original which shall be deposited in the archives of the department of state of the United States, and a duly certified copy shall be forwarded to the governor of each of the signatory states.

This compact shall become effective when ratified and approved as provided in Article I. Any oil-producing state may become a party hereto by affixing its signature to a counterpart to be similarly deposited, certified, and ratified.

Done in the city of Dallas, Texas, this sixteenth day of February, 1935.

(Originally signed by the representatives of the following states: Oklahoma, Texas, New Mexico, Colorado, Illinois, Michigan, California, Arkansas, and Kansas.)”

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62103 Interstate oil and gas compact commission; governor as representative of state; powers and duties; assistant representatives.

Sec. 62103. The governor shall be the official representative of the state of Michigan on “the interstate oil and gas compact commission,” provided for in the compact to conserve oil and gas, and shall exercise and perform for the state of Michigan all the powers and duties as a member of “the interstate oil and gas compact commission”: However, he or she may appoint assistant representatives who shall act in his or her stead as the official representatives of the state of Michigan as a member of the commission. The assistant representatives shall take the oath of office prescribed by the constitution, which shall be filed with the secretary of state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBCHAPTER 3 MINERAL WELLS

PART 625 MINERAL WELLS

324.62501 Definitions.

Sec. 62501. As used in this part:

(a) “Artificial brine” means mineralized water formed by dissolving rock salt or other readily soluble rocks or minerals.

(b) “Brine well” means a well drilled or converted for the purpose of producing natural or artificial brine.

- (c) "Department" means the department of environmental quality.
- (d) "Disposal well" means a well drilled or converted for subsurface disposal of waste products or processed brine and its related surface facilities.
- (e) "Exploratory purposes" means test well drilling for the specific purpose of discovering or outlining an orebody or mineable mineral resource.
- (f) "Fund" means the mineral well regulatory fund created in section 62509b.
- (g) "Mineral well" means any well subject to this part.
- (h) "Natural brine" means naturally occurring mineralized water other than potable or fresh water.
- (i) "Operator" means the person, whether owner or not, supervising or responsible for the drilling, operating, repairing, abandoning, or plugging of wells subject to this part.
- (j) "Owner" means the person who has the right to drill, convert, or operate any well subject to this part.
- (k) "Pollution" means damage or injury from the loss, escape, or unapproved disposal of any substance at any well subject to this part.
- (l) "Storage well" means a well drilled into a subsurface formation to develop an underground storage cavity for subsequent use in storage operations. Storage well does not include a storage well drilled pursuant to part 615.
- (m) "Supervisor of mineral wells" means the state geologist.
- (n) "Surface waste" means damage to, injury to, or destruction of surface waters, soils, animal, fish, and aquatic life, or surface property from unnecessary seepage or loss incidental to or resulting from drilling, equipping, or operating a well or wells subject to this part.
- (o) "Test well" means a well, core hole, core test, observation well, or other well drilled from the surface to determine the presence of a mineral, mineral resource, ore, or rock unit, or to obtain geological or geophysical information or other subsurface data related to mineral exploration and extraction. Test well does not include holes drilled in the operation of a quarry, open pit, or underground mine, or any wells not related to mineral exploration or extraction.
- (p) "Underground storage cavity" means a cavity formed by dissolving rock salt or other readily soluble rock or mineral, by nuclear explosion, or by any other method for the purpose of storage or disposal.
- (q) "Underground waste" means damage or injury to potable water, mineralized water, or other subsurface resources.
- (r) "Waste product" means waste or by-product resulting from municipal or industrial operations or waste from any trade, manufacture, business, or private pursuit that could cause pollution and for which underground disposal may be feasible or practical.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 467, Imd. Eff. Jan. 4, 1999.

Popular name: Act 451

Popular name: NREPA

324.62502 Waste prohibited.

Sec. 62502. A person shall not cause surface or underground waste in the drilling, development, production, operation, or plugging of wells subject to this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62503 Supervisor of mineral wells; appointment of assistants; salaries; expenses.

Sec. 62503. The supervisor of mineral wells shall appoint, with the approval of the department, assistants as necessary to implement this part. The supervisor of mineral wells and assistants, in addition to salaries, shall receive reasonable traveling expenses while on business connected with their duties pursuant to standard travel regulations of the department of management and budget.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62504 Appeal board; persons entitled to appeal; hearing; right to be heard.

Sec. 62504. The commission shall act as an appeal board regarding the issuance, denial, suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a permit under this part. If an owner or operator considers an order made by the supervisor of mineral wells to be unduly burdensome, inequitable, or unwarranted, the owner or operator may appeal to the commission or the court for relief as provided in this act, and shall give notice to the supervisor of mineral wells. The chairperson of the commission shall set a

date and place to hear the appeal, which may be at any regular meeting or at any special meeting of the commission duly called for that purpose. The supervisor of mineral wells or any person interested in the matter has the right to be heard at such hearing.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62505 Administration and enforcement of part; jurisdiction of supervisor.

Sec. 62505. The supervisor of mineral wells shall have jurisdiction over the administration and enforcement of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62506 Prevention of waste; rules; waste; enforcement.

Sec. 62506. The supervisor of mineral wells shall prevent the wastes defined in and prohibited by this part. Acting directly or through his or her deputy or authorized representative, and following public hearing, the supervisor of mineral wells shall promulgate rules subject to the approval of the department and issue orders and instructions necessary to enforce these rules.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62506a Definitions; drilling multisource commercial hazardous waste disposal well; construction permit required; construction of section.

Sec. 62506a. (1) As used in this section:

(a) “Hazardous waste”, “storage facility”, and “treatment facility” have the meanings ascribed to these terms in part 111.

(b) “Multisource commercial hazardous waste disposal well” means a disposal well that receives hazardous waste that is generated by more than 1 person. Multisource commercial hazardous waste disposal well does not include a disposal well that receives hazardous waste generated from a subsidiary of the person that owns or operates a hazardous waste disposal well.

(c) “Person” includes a governmental entity.

(2) Prior to the drilling of a multisource commercial hazardous waste disposal well or the conversion of a well to a multisource commercial hazardous waste disposal well, a person shall have obtained a construction permit for an on-site treatment facility and storage facility under section 11118.

(3) Nothing in the amendatory act that added this section shall be construed to abrogate common law.

History: Add. 1996, Act 168, Eff. May 3, 1996.

Popular name: Act 451

Popular name: NREPA

324.62507 Emergency orders; issuance; duration.

Sec. 62507. The supervisor of mineral wells, acting directly or through his or her deputy or authorized representative, may issue emergency orders without a public hearing to implement this part. Emergency orders remain in force and effect for not more than 21 days.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62508 Supervisor of mineral wells; powers.

Sec. 62508. The supervisor of mineral wells, acting directly or through his or her deputy or authorized representative, may do any of the following:

(a) Make inspections and provide for the keeping of records and checking on the accuracy thereof.

(b) Require the locating, drilling, deepening, reworking, reopening, casing, sealing, injecting, mechanical and chemical treating, and plugging of wells subject to this part to be accomplished in a manner that is designed to prevent surface and underground waste.

(c) Designate after public hearing those areas of the state in which there is no known or potential danger of surface or underground waste from test well drilling and in which permits to drill test wells are not required.

(d) Require on all wells the keeping and filing of logs containing data that are appropriate to the purposes of this part. Logs on brine and test wells shall be held confidential for 10 years after completion and shall not be open to public inspection during that time except by written consent of the owner or operator. Logs for test wells drilled for exploratory purposes shall be held confidential until released by the owner or operator. The logs on all brine and test wells for exploratory purposes shall be opened to public inspection when the owner is no longer an active mineral producer, mineral lease holder, or owner of mineral lands in this state.

(e) Require on storage and waste disposal wells, when specified by the supervisor of mineral wells, the keeping and filing of drillers' logs and sample logs, the running and filing of electrical and radioactivity logs, and the keeping and filing of drill cuttings, cores, water samples, pilot injection test records, operating records, and other reports.

(f) Release to the department or the commission, for meetings and hearings, only data described in this section that are necessary to the administration of this part in the prevention or correction of surface or underground waste.

(g) Order through written notice the immediate suspension or prompt correction of any operation, condition, or practice found to exist that is causing, resulting in, or threatening to cause or result in surface or underground waste.

(h) Require the filing of an adequate surety or security bond and provide for the release of that surety or security bond.

(i) Qualify persons for blanket permits.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62509 Drilling or conversion permits; application; bond; permit not required; blanket permit; confidentiality of information, records, logs, and reports; fees.

Sec. 62509. (1) A person shall not drill or begin the drilling of any brine, storage, or waste disposal well, or convert any well for these uses, and except as authorized by a permit issued by the supervisor of mineral wells pursuant to part 13 and rules promulgated by the supervisor of mineral wells, and unless the person files with the supervisor of mineral wells an approved surety or security bond. The application shall be accompanied by a survey of the well site. The department shall conduct an investigation and inspection before the supervisor of mineral wells issues a permit. A permit shall not be issued to any owner or his or her authorized representative who does not comply with the rules of the supervisor of mineral wells or who is in violation of this part or any rule of the supervisor of mineral wells. Upon completion of the drilling or converting of a well for storage or waste disposal and after necessary testing by the owner to determine that the well can be used for these purposes and in a manner that will not cause surface or underground waste, the supervisor of mineral wells, upon receipt of appropriate evidence, shall approve and regulate the use of the well for storage or waste disposal. These operations shall be pursuant to part 31. The supervisor of mineral wells may schedule a public hearing to consider the need or advisability of permitting the drilling or operating of a storage or waste disposal well, or converting a well for these uses, if the public safety or other interests are involved.

(2) A person shall not drill a test well 50 feet or greater in depth into the bedrock or below the deepest freshwater strata, except as provided in section 62508(c), except as authorized by a permit issued by the supervisor of mineral wells pursuant to part 13 and rules promulgated by the supervisor of mineral wells, and unless the person files with the supervisor of mineral wells an approved surety or security bond. The application shall be accompanied by the fee provided in subsection (6). The department shall conduct an investigation and inspection before the supervisor of mineral wells issues a permit. A permit shall not be issued to any owner or his or her authorized representative who does not comply with the rules of the supervisor of mineral wells or who is in violation of this part or any rule of the supervisor of mineral wells. A test well that penetrates below the deepest freshwater stratum or is greater than 250 feet in depth is subject to an individual test well permit. A test well that does not penetrate below the deepest freshwater stratum and is 250 feet or less in depth is subject to a blanket test well permit. This subsection does not apply to a test well regulated under part 111 or part 115, or a water well regulated under part 127 of the public health code, 1978 PA 368, MCL 333.12701 to 333.12771.

(3) A permit is not required to drill a test well in those areas of the state where rocks of Precambrian age directly underlie unconsolidated surface deposits or in those areas that have been designated pursuant to section 62508(c). However, within 2 years after completion of the drilling of the well, the owner shall advise the supervisor of mineral wells of the location of the well and file with the supervisor of mineral wells the log required under section 62508(d). The provisions of this part pertaining to the prevention and correction of surface and underground waste have the same application to these test wells as to other wells defined in this

part.

(4) Upon request, the supervisor of mineral wells may issue to qualified persons a blanket permit to drill within a county test wells which will not penetrate below the deepest freshwater stratum and are 250 feet or less in depth.

(5) All information and records pertaining to the application for and issuance of permits for wells subject to this part shall be held confidential in the same manner as provided for logs and reports on these wells.

(6) A permit application submitted under this section shall be accompanied by the following permit application fee:

(a)	Disposal well for disposal of waste products other than processed brine.....	\$ 2,500.00.
(b)	Disposal well for disposal of processed brine.....	\$ 500.00.
(c)	Storage well.....	\$ 500.00.
(d)	Natural brine production well.....	\$ 500.00.
(e)	Artificial brine production well.....	\$ 500.00.
(f)	Individual test well under subsection (2).....	\$ 500.00.
(g)	Blanket permit for test wells drilled pursuant to subsection (4):	
(i)	1 to 24 wells.....	\$ 75.00.
(ii)	25 to 49 wells.....	\$ 150.00.
(iii)	50 to 75 wells.....	\$ 300.00.
(iv)	75 to 200 wells.....	\$ 600.00.

(7) The supervisor of mineral wells shall deposit all permit application fees collected under this section into the fund.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 467, Imd. Eff. Jan. 4, 1999;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.62509a Mineral well regulatory fee.

Sec. 62509a. (1) The owner or operator of a well regulated under this part is subject to the following annual mineral well regulatory fee. The fee shall apply to any mineral well that is usable for its permitted purpose, or has not been properly plugged in accordance with the requirements of this part and rules promulgated under this part, at the time the fee is due:

(a)	For a disposal well for disposal of waste products other than processed brine.....	\$2,500.00
(b)	For a disposal well for disposal or processed brine.....	\$ 500.00
(c)	For a storage well.....	\$ 500.00
(d)	For a natural brine production well.....	\$ 500.00
(e)	For an artificial brine production well..	\$ 500.00
(f)	For an individual test well.....	\$ 500.00
(g)	For a blanket permit for test wells:	
(i)	1 to 24 wells.....	\$ 75.00
(ii)	25 to 49 wells.....	\$ 150.00
(iii)	50 to 75 wells.....	\$ 300.00
(iv)	75 to 200 wells.....	\$ 600.00

(2) Mineral well regulatory fees shall be submitted to the department in the manner required by the department along with any documentation required by the department.

(3) The department shall forward all mineral well regulatory fees collected under this section to the state treasury for deposit in the fund.

History: Add. 1998, Act 467, Imd. Eff. Jan. 4, 1999.

Compiler's note: In subsection (1)(b), the phrase "For a disposal well for disposal or processed brine" should evidently read "For a disposal well for disposal of processed brine."

Popular name: Act 451

Popular name: NREPA

324.62509b Mineral well regulatory fund.

Sec. 62509b. (1) The mineral well regulatory 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 implement and enforce this part.

History: Add. 1998, Act 467, Imd. Eff. Jan. 4, 1999.

Popular name: Act 451

Popular name: NREPA

324.62510 Enforcement of part and rules; jurisdiction of court; representation by attorney general.

Sec. 62510. The supervisor of mineral wells may bring proceedings for the enforcement of this part and rules promulgated under this part in the circuit court of Ingham county or in the circuit court of the county in which a violation is alleged to have occurred. The attorney general shall represent the supervisor of mineral wells in all actions brought under this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62511 Suits against supervisor, commission, agent or employee; jurisdiction of Ingham county circuit court.

Sec. 62511. The circuit court of Ingham county has exclusive jurisdiction of all suits brought against the supervisor of mineral wells or commission, or their agents or employees, by or on account of any matter or thing arising under this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62512 Hearing; notice of time, place, and issues; service in form of notice by registered mail; responsibility for publication of notice and payment.

Sec. 62512. (1) The jurisdictional requirement of notice of time, place, and issues involved in a hearing required by this part shall be given in the manner prescribed by 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, and by publication once each week for 2 weeks consecutively in a newspaper of general circulation in the area where a specific matter of concern is located, with the last date of publication at least 3 days before the date set for hearing.

(2) If a list of interested persons is a part of the petition for hearing, or if the name of an interested person is on record with the supervisor of mineral wells, service in the form of notice by registered mail shall be made by the petitioner to the interested person.

(3) The publishing of a notice of hearing and payment for the publishing are the responsibility of the petitioner. The supervisor of mineral wells is responsible for the publishing and payment for the publishing on a hearing initiated by the supervisor of mineral wells.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62513 Persons authorized to conduct hearings and investigations; acts by supervisor's deputy or representative; effect.

Sec. 62513. All hearings and other actions pertaining to these hearings or investigations may be conducted by the supervisor of mineral wells or the supervisor's deputy or authorized representative, and all acts of the deputy or authorized representative have the same force and effect as if done by the supervisor of mineral wells.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62514 Supervisor of mineral wells; power to summon witnesses, administer oaths, require production of documents; noncompliance; contempt.

Sec. 62514. (1) The supervisor of mineral wells may summon witnesses, administer oaths, and, when necessary to carry out the provisions of this part, require the production of appropriate records, books, and documents.

(2) Upon failure or refusal of any person to comply with a subpoena issued by the supervisor of mineral wells, or upon the refusal of any witness to testify as to any matter on which he or she may be interrogated as being pertinent to the hearing or investigation, the person or witness may be subject to a court order compelling him or her to comply with such subpoena, and to appear before the supervisor of mineral wells and produce the records, books, and documents for examination and to testify. The court may punish for contempt or for refusal to testify.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62515 Failure to case, seal, operate, repair, or plug wells; notice; expense of repair or correction; collection.

Sec. 62515. Whenever the supervisor of mineral wells or the supervisor's deputy or authorized representative determines that an owner or operator has failed or neglected to case, seal, operate, repair, or plug a well pursuant to this part or the rules promulgated or orders issued under this part, notice of the determination shall be given to the owner or operator and to the surety executing the bond filed by the owner or operator. If the owner or operator, or surety, fails to correct the specified conditions pursuant to the rule or order of the supervisor of mineral wells within 60 days after service of notice, the supervisor of mineral wells may enter into or upon any private or public property on which the well is located, and across any private or public property to reach the well, and repair or correct the specified condition, and the owner, operator, and surety are jointly and severally liable for all expenses incurred. The supervisor of mineral wells shall certify to the owner, operator, and surety the claim of the state, listing in the claim the items of expense in making the repair or correction. The claims shall be paid by the owner or operator, or surety, within 30 days, and if not paid within that time, the supervisor of mineral wells may bring suit in the circuit court of Ingham county against the owner, operator, and surety, jointly and severally, for the collection.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62516 Prohibited acts.

Sec. 62516. A person shall not do any of the following:

- (a) Willfully violate any provision of this part or any rule or order of the supervisor of mineral wells.
- (b) Drill or convert any well subject to this part without first obtaining a permit or operate a storage or waste disposal well without approval as provided in this part.
- (c) Do any of the following for the purpose of evading or violating this part or any rule promulgated or order issued under this part:
 - (i) Make false entry or statement in any required report or record.
 - (ii) Omit or cause to be omitted from any required report or record full, true, and correct entries as required by this part.
 - (iii) Remove from this state or destroy, mutilate, alter, or falsify any report or record required by this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62517 Violations; penalties.

Sec. 62517. A person who violates this part is subject to a fine of not more than \$1,000.00, and each day that the violation continues constitutes a separate offense. The penalty shall be recovered by suit brought by the supervisor of mineral wells. A person aiding in a violation of this part or a rule promulgated under this part is subject to the same penalties as prescribed in this section.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62518 Construction of part.

Sec. 62518. This part does not apply to wells drilled under the authority of part 41 or part 615. This part does not supersede or contravene any of the provisions of part 81.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBCHAPTER 4 MINERAL MINING

PART 631 FERROUS MINERAL MINING

324.63101 Definitions.

Sec. 63101. As used in this part:

- (a) "Department" means the department of environmental quality.
- (b) "Ferrous mineral" or "mineral" means ferrous ore or material mined for its ferrous content.
- (c) "Ferrous mineral operator" or "operator" means a person who owns or leases the plant and equipment utilized in a mining area and is engaged in the business of mining ferrous minerals or preparing to engage in mining operations.
- (d) "Ferrous product" means a commercially salable ferrous mineral in its final marketable form or state.
- (e) "Life of the mine" means the period of time from issuance of a permit under this part through the completion of reclamation as required by this part.
- (f) "Mining area" or "area subjected to mining" means land from which material is removed in connection with the production or extraction of ferrous minerals by surface or open pit mining methods, on which material from that mining is deposited, on which beneficiating or treatment plants and auxiliary facilities are located, or on which the water reservoirs used in the mining operation are located, and includes auxiliary land that is used for these purposes.
- (g) "Mining operation" means a ferrous mineral mining operation.
- (h) "Stockpile" means material, including, but not limited to, surface overburden, rock, or lean ore, that in the process of ferrous mineral mining and beneficiation or treatment has been removed from the earth and stored on the surface. However, stockpile does not include materials that are being treated in the production of mineral products and the mineral product that has been produced by that operation.
- (i) "Supervisor of reclamation" means the department.
- (j) "Surface or open pit mining" means the mining of more than 10,000 tons of a ferrous mineral or disturbing more than 1 acre of land a year in the regular operation of a business either by removing the overburden lying above a natural deposit of a ferrous mineral and mining directly from the natural deposit exposed or by mining directly from a deposit lying exposed in the ferrous mineral's natural state. Surface or open pit mining includes all ferrous mineral mining below the water table or which will upon cessation of mining result in creating a body of water of any size. Surface or open pit mining does not include excavation or grading preliminary to a construction project.
- (k) "Tailings basin" means land on which is deposited, by hydraulic or other means, the material that is separated from the mineral product in the beneficiation or treatment of ferrous minerals including any surrounding dikes constructed to contain the material.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1997, Act 149, Imd. Eff. Dec. 2, 1997;—Am. 2004, Act 449, Imd. Eff. Dec. 27, 2004;—Am. 2011, Act 214, Imd. Eff. Nov. 8, 2011.

Popular name: Act 451

Popular name: NREPA

324.63102 Repealed. 2011, Act 214, Imd. Eff. Nov. 8, 2011.

Compiler's note: The repealed section pertained to a study and survey conducted by supervisor of reclamation.

324.63103 Mining operations; rules.

Sec. 63103. The department may promulgate rules pertaining to mining operations conducted subsequent to their effective date, subject to any rights existing pursuant to any permit, license, lease, or other valid existing authorization issued by a governmental entity and to applicable mine safety laws or rules, for the following purposes:

(a) The sloping, terracing, or other practical treatment of stockpiles and tailings basins where erosion is occurring or is likely to occur that results or may result in injury or damage to fish and wildlife or the pollution of public waters or that is causing or might cause injury to the property or person of others.

(b) The vegetation or other practical treatment of tailings basins and stockpiles upon becoming permanently inactive if substantial natural vegetation is not expected within 5 years and if research reveals that vegetation can reasonably be accomplished within practical limitations.

(c) The stabilization of the surface overburden banks of open pits in rock and the entire bank of open pits in unconsolidated materials upon their abandonment.

(d) The cleanup of mining areas and the removal of debris from those areas on termination of the mining operation.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2011, Act 214, Imd. Eff. Nov. 8, 2011.

Popular name: Act 451

Popular name: NREPA

324.63103a Mining of ferrous minerals; permit required.

Sec. 63103a. A ferrous mineral operator shall not engage in the mining of ferrous minerals except as authorized by a permit issued by the department pursuant to part 13. The department shall not issue a permit unless the applicant has submitted to the department, in addition to the permit application, a mining and reclamation plan for the proposed ferrous mining activity as prescribed by section 63103b.

History: Add. 1997, Act 149, Imd. Eff. Dec. 2, 1997;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2011, Act 214, Imd. Eff. Nov. 8, 2011.

Popular name: Act 451

Popular name: NREPA

324.63103b Mining and reclamation plan.

Sec. 63103b. The mining and reclamation plan submitted under section 63103a shall include all of the following for the total project:

(a) The method and direction of mining.

(b) Surface overburden stripping plans.

(c) The depth of grade level over the entire site from which the ferrous mineral will be removed.

(d) Provisions for grading, revegetation, and stabilization that will minimize soil erosion, sedimentation, and public safety concerns.

(e) The location of buildings, equipment, stockpiles, roads, or other features necessary to the mining activity and provisions for their removal and restoration of the area at the project termination.

(f) The interim use or uses of reclaimed areas before the cessation of the entire mining operation.

(g) Maps and other supporting documents required by the department.

(h) Fencing or other techniques to minimize trespass or unauthorized access to the mining activity.

(i) If required by the department when mining activity below the water table is proposed, a hydrogeological survey of the surrounding area.

(j) If threatened or endangered species are identified, an indication of how the threatened or endangered species will be protected or, if not protected, what mitigation measures will be performed.

(k) If the proposed mining activity includes beneficiation or treatment of the ferrous ore or material mined for its ferrous content, the application documents shall include specific plans depicting the beneficiation and treatment methods and techniques, and manufacturer's material safety data sheets on all chemicals or other additives that are not natural to the site, that will be utilized in the process. The operator shall obtain all applicable state and federal permits before beginning the beneficiation process.

History: Add. 1997, Act 149, Imd. Eff. Dec. 2, 1997;—Am. 2011, Act 214, Imd. Eff. Nov. 8, 2011.

Popular name: Act 451

Popular name: NREPA

324.63103c Ferrous mineral mining permit.

Sec. 63103c. (1) A ferrous mineral mining permit issued by the department is valid for the life of the mine. However, the department may revoke a ferrous mineral mining permit under the following conditions:

(a) The permittee has not commenced construction of plant facilities or conducted actual mining and reclamation activities covered by the permit within 3 years after the date of issuance of the permit.

(b) The permittee requests the revocation of the ferrous mineral mining permit and the department determines the mining activity has not polluted, impaired, or destroyed the air, water, or other natural resources or the public trust in those resources, as provided in part 17.

(c) The permittee fails to submit the annual report of production as required by section 63103d(2).

(d) The department finds that the permittee is not in compliance with this part, the rules promulgated under this part, or the ferrous mineral permit and there exists an imminent threat to the health and safety of the public.

(2) The department may order immediate suspension of any or all activities at a ferrous mineral mining operation, including the removal of ferrous product from the site, if the department finds there exists an emergency endangering the public health and safety or an imminent threat to the natural resources of the state.

(3) An order suspending operations shall be in effect until the operation is in compliance and protection of the public health and safety is ensured or the threat to the natural resources has been eliminated, but not more than 10 days. To extend the suspension beyond 10 days, the department shall issue an emergency order to continue the suspension of operations and shall schedule a hearing as provided by the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The total duration of the suspension of operations shall not be more than 30 days.

(4) A ferrous mineral mining permit may be transferred with approval of the department. The person seeking to acquire the permit shall submit a request for transfer of the permit to the department on forms provided by the department. The person acquiring the permit shall accept the conditions of the existing permit and adhere to the requirements set forth on the approved mining and reclamation plan. Pending the transfer of the existing permit, the person seeking to acquire the permit shall not operate the mine.

(5) A ferrous mineral mining permit shall not be transferred to a person who has been determined by the department to be in violation of any of the following, until the person acquiring the permit has corrected the violation or the department has accepted a compliance schedule and a written agreement has been reached to correct the violations:

- (a) This part.
- (b) The rules promulgated under this part.
- (c) Permit conditions.
- (d) An order of the department.

(6) If the permittee of a ferrous mineral mining operation is under notice because of unsatisfactory conditions at the mining site involved in the transfer, then the permit for the mining operation shall not be transferred to a person until the permittee has completed the necessary corrective actions or the person acquiring the permit has entered into a written agreement to correct all of the unsatisfactory conditions.

(7) A ferrous mineral mining permit may be amended upon submission to the department of a request by the permittee. Upon receipt of the request to amend an existing ferrous mineral permit, the department shall determine if the request constitutes a significant change from the conditions of the approved permit. If the department determines the request is a significant change from the conditions of the approved permit, the department may submit the request for amendment to the same review process as provided in part 13. If a request to amend the permit is denied, the reasons for denial shall be stated in a written report to the permittee. If the department determines the request for amendment does not constitute a significant change from the conditions of the approved permit, the department shall approve the amendment and notify the permittee.

History: Add. 1997, Act 149, Imd. Eff. Dec. 2, 1997;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2011, Act 214, Imd. Eff. Nov. 8, 2011.

Popular name: Act 451

Popular name: NREPA

324.63103d Ferrous mineral surveillance fee; annual report of production.

Sec. 63103d. (1) For purposes of surveillance, monitoring, administration, and enforcement of this part, a ferrous mineral operator shall be assessed a ferrous mineral surveillance fee on the ferrous product produced for the calendar year reported as described in subsection (2). The fee shall be assessed upon ferrous product and shall not be more than 1 cent per metric ton. Funds collected by the assessment of the ferrous mineral surveillance fee shall not exceed the actual costs to the department of implementing the sections of this part that pertain to ferrous mineral mining. Surveillance fees collected under this section shall be forwarded to the state treasurer for deposit in the ferrous mineral surveillance fund created in section 63103e.

(2) A ferrous mineral operator shall file an annual report of production on or before February 15 of each year. The report shall contain the annual production of ferrous product from each ferrous mineral mine.

(3) The ferrous mineral surveillance fee described in subsection (1) is due 30 days after the department sends written notice to the ferrous mineral operator of the amount due.

(4) Failure to submit an annual report of production in compliance with rules promulgated by the department constitutes grounds for revocation of a permit.

(5) A penalty equal to 10% of the amount due, or \$1,000.00, whichever is greater, shall be assessed against the ferrous mineral operator for a fee that is not paid when due. An unpaid fee and penalty constitute a debt and the basis of a judgment against the operator. Penalties paid pursuant to this section shall be used for the implementation, administration, and enforcement of this part.

(6) Records upon which the annual report of production is based shall be preserved for 3 years and are subject to audit by the department.

History: Add. 1997, Act 149, Imd. Eff. Dec. 2, 1997;—Am. 2011, Act 214, Imd. Eff. Nov. 8, 2011.

Popular name: Act 451

Popular name: NREPA

324.63103e Ferrous mineral surveillance fund.

Sec. 63103e. (1) The ferrous mineral surveillance fund is created within the state treasury.

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

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

(4) The department shall expend money from the ferrous mineral surveillance fund, upon appropriation, only for surveillance, monitoring, administration, and enforcement under this part and for computing the surveillance fee under section 63103d.

History: Add. 1997, Act 149, Imd. Eff. Dec. 2, 1997;—Am. 2011, Act 214, Imd. Eff. Nov. 8, 2011.

Popular name: Act 451

Popular name: NREPA

324.63104 Mining operations; variance or modification from rules.

Sec. 63104. The supervisor of reclamation, on application by the landowner or operator, may modify or permit variance from the rules promulgated under this part if the supervisor of reclamation determines that the modification or variance is not contrary to the public interest.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63105 Supervisor of reclamation; administration of part and rules; powers.

Sec. 63105. The supervisor of reclamation shall administer and enforce this part and the rules promulgated under this part. The supervisor of reclamation may do any of the following:

(a) Consult with and obtain the assistance of the other divisions of the department.

(b) Enter on the mining areas in connection with any investigation and inspection without liability to the operator or landowner if reasonable prior notice of the intention to do so has been given to the operator or landowner.

(c) Conduct research or enter into contracts related to mining areas and the reclamation of mining areas as may be necessary to implement this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63106 Plan maps; filing by operator; form; annual changes; long-range plans.

Sec. 63106. For the purpose of information and to assist the supervisor of reclamation in proper enforcement of rules promulgated under this part, an operator shall file with the supervisor of reclamation a plan map in the form determined by the supervisor of reclamation showing all existing mining areas or areas subjected to mining by the operator. Annually thereafter, on or before March 15, the operator shall file a plan map in similar form showing any changes made during the preceding calendar year and the mining area that the operator anticipates will be subjected to mining during the current calendar year. The supervisor of reclamation periodically shall ascertain the long-range land environment plans of the operator.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63107 Performance bond, security, or assurance of operator.

Sec. 63107. The supervisor of reclamation, if he or she has reasonable doubts as to an operator's financial ability to comply with the rules promulgated under this part as to actions to be taken after completion of mining operations or any phase of mining operations, may require an operator to furnish a performance bond or other security or assurance satisfactory to the supervisor of reclamation. The supervisor of reclamation may postpone furnishing of the bond, security, or assurance depending upon the life of the mining operation.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63108 Injunctive relief to prevent violation of rules.

Sec. 63108. At the request of the supervisor of reclamation, the attorney general may institute an action in a circuit court of the county in which the mining operation affected is conducted for a restraining order or injunction or other appropriate remedy to prevent or preclude a violation of the terms and conditions of any rule promulgated under this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63110 Scope of part.

Sec. 63110. This part does not apply to activities subject to part 632.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004.

Popular name: NREPA

PART 632

NONFERROUS METALLIC MINERAL MINING

324.63201 Definitions.

Sec. 63201. As used in this part:

(a) "Administratively complete" describes an application for a mining permit under this part that contains all of the documents and information required under this part and any rules promulgated under this part.

(b) "Affected area" means an area outside of the mining area where the land surface, surface water, groundwater, or air resources are determined through an environmental impact assessment to be potentially affected by mining operations within the proposed mining area.

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

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

(e) "Fund" means the nonferrous metallic mineral surveillance fund created in section 63217.

(f) "Metallic product" means a commercially salable mineral produced primarily for its nonferrous metallic mineral content in its final marketable form or state.

(g) "Mining", except as provided in subdivision (h), means the excavation or removal of more than 10,000 tons of earth material in a calendar year or disturbing more than 1 acre of land in a calendar year in the regular operation of a business for the purpose of extracting a nonferrous metallic mineral or minerals by 1 or both of the following:

(i) Removing the overburden lying above natural deposits of a mineral and excavating directly from the natural deposits thus exposed or by excavating directly from deposits lying exposed in their natural state.

(ii) Excavating from below the surface of the ground by means of shafts, tunnels, or other subsurface openings.

(h) Mining does not include an operation that is subject to part 634.

(i) "Mining area" means an area of land from which earth material is removed in connection with nonferrous metallic mineral mining, the lands on which material from that mining is stored or deposited, the lands on which beneficiating or treatment plants and auxiliary facilities are located, the lands on which the water reservoirs used in the nonferrous metallic mineral mining process are located, and auxiliary lands that are used in connection with the mining.

(j) "Mining permit" means a permit issued under this part for conducting nonferrous metallic mineral mining and reclamation operations.

(k) "Nonferrous metallic mineral" means any ore or material to be excavated from the natural deposits on

or in the earth for its metallic content, but not primarily for its iron or iron mineral content, to be used for commercial or industrial purposes.

(l) "Nonferrous metallic mineral operator" or "operator" means a permittee or other person who is engaged in, or who is preparing to engage in, mining operations for nonferrous metallic minerals, whether individually or jointly, or through agents, employees, or contractors.

(m) "Permittee" means a person who holds a mining permit.

(n) "Postclosure monitoring period" means a period following closure of a nonferrous metallic mineral mine during which the permittee is required to conduct monitoring of groundwater and surface water.

(o) "Stockpile" means material, including, but not limited to, surface overburden, rock, or lean ore, that in the process of mining and beneficiation or treatment has been removed from the earth and stored on the surface. Stockpile does not include materials that are being treated in the production of metallic products and the metallic product that has been produced by that operation.

(p) "Tailings basin" means land on which is deposited, by hydraulic or other means, the material that is separated from the metallic product in the beneficiation or treatment of minerals and includes any surrounding dikes constructed to contain the material.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004;—Am. 2017, Act 40, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

324.63202 Legislative findings.

Sec. 63202. The legislature finds that:

(a) It is the policy of this state to foster the conservation and development of the state's natural resources.

(b) Discoveries of nonferrous metallic sulfide deposits have resulted in intensive exploration activities and may lead to the development of 1 or more mines.

(c) Nonferrous metallic sulfide deposits are different from the iron oxide ore deposits currently being mined in Michigan in that the sulfide minerals may react, when exposed to air and water, to form acid rock drainage. If the mineral products and waste materials associated with nonferrous metallic sulfide mining operations are not properly managed and controlled, they can cause significant damage to the environment, impact human health, and degrade the quality of life of the impacted community.

(d) The special concerns surrounding nonferrous metallic mineral mining warrant additional regulatory measures beyond those applied to the current iron mining operations.

(e) Nonferrous metallic mineral mining may be an important contributor to Michigan's economic vitality. The economic benefits of nonferrous metallic mineral mining shall occur only under conditions that assure that the environment, natural resources, and public health and welfare are adequately protected.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004.

Popular name: Act 451

Popular name: NREPA

324.63203 Nonferrous metallic mineral mining; administration and enforcement; rules; regulation or control by local units of government.

Sec. 63203. (1) The department shall administer and enforce this part in order to regulate nonferrous metallic mineral mining. In addition to other powers granted to it, the department may promulgate rules it considers necessary to carry out its duties under this part, including standards for construction, operation, closure, postclosure monitoring, reclamation, and remediation of a nonferrous metallic mineral mine. However, the department shall not promulgate any additional rules under this part after February 15, 2006.

(2) The department may do either of the following:

(a) Enter at all reasonable times in or upon a mining area for the purpose of inspecting and investigating conditions relating to the operation of a mining area. However, an investigation or inspection under this subsection shall comply with the United States constitution, the state constitution of 1963, and this section.

(b) Conduct research or enter into contracts related to mining areas and the reclamation of mining areas as may be necessary to implement this part.

(3) Subject to subsections (4) and (5), a local unit of government shall not regulate or control mining or reclamation activities that are subject to this part, including construction, operation, closure, postclosure monitoring, reclamation, and remediation activities, and does not have jurisdiction concerning the issuance of permits for those activities.

(4) A local unit of government may enact, maintain, and enforce ordinances, regulations, or resolutions affecting mining operations if the ordinances, regulations, or resolutions do not duplicate, contradict, or

conflict with this part. In addition, a local unit of government may enact, maintain, and enforce ordinances, regulations, or resolutions regulating the hours at which mining operations may take place and routes used by vehicles in connection with mining operations. However, such ordinances, regulations, or resolutions shall be reasonable in accommodating customary nonferrous metallic mineral mining operations.

(5) Subsections (3) and (4) do not prohibit a local unit of government from conducting water quality monitoring.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004;—Am. 2005, Act 299, Imd. Eff. Dec. 21, 2005.

Popular name: Act 451

Popular name: NREPA

324.63205 Mining permit; application procedure.

Sec. 63205. (1) A person shall not engage in the mining of nonferrous metallic minerals except as authorized in a mining permit issued by the department.

(2) An application for a mining permit shall be submitted to the department in a format to be developed by the department. The application shall be accompanied by all of the following:

(a) A permit application fee of \$5,000.00. The department shall forward all permit application fees received under this section to the state treasurer for deposit in the fund.

(b) An environmental impact assessment for the proposed mining operation that describes the natural and human-made features, including, but not limited to, flora, fauna, hydrology, geology, and geochemistry, and baseline conditions in the proposed mining area and the affected area that may be impacted by the mining, and the potential impacts on those features from the proposed mining operation. The environmental impact assessment shall define the affected area and shall address feasible and prudent alternatives.

(c) A mining, reclamation, and environmental protection plan for the proposed mining operation, including beneficiation operations, that will reasonably minimize the actual and potential adverse impacts on natural resources, the environment, and public health and safety within the mining area and the affected area. The plan shall address the unique issues associated with nonferrous metallic mining and shall include all of the following:

(i) A description of materials, methods, and techniques that will be utilized.

(ii) Information that demonstrates that all methods, materials, and techniques proposed to be utilized are capable of accomplishing their stated objectives in protecting the environment and public health, except that such information may not be required for methods, materials, and techniques that are widely used in mining or other industries and are generally accepted as effective. The required information may consist of results of actual testing, modeling, documentation by credible independent testing and certification organizations, or documented applications in similar uses and settings.

(iii) Plans and schedules for interim and final reclamation of the mining area following cessation of mining operations.

(iv) A description of the geochemistry of the ore, waste rock, overburden, peripheral rock, and tailings, including characterization of leachability and reactivity.

(v) Provisions for the prevention, control, and monitoring of acid-forming waste products and other waste products from the mining process so as to prevent leaching into groundwater or runoff into surface water.

(d) A contingency plan that includes an assessment of the risk to the environment or public health and safety associated with potential significant incidents or failures and describes the operator's notification and response plans. When the application is submitted to the department, the applicant shall provide a copy of the contingency plan to each emergency management coordinator having jurisdiction over the affected area.

(e) Financial assurance as described in section 63211.

(f) A list of other state and federal permits that are anticipated to be required.

(3) The applicant has the burden of establishing that the terms and conditions set forth in the permit application; mining, reclamation, and environmental protection plan; and environmental impact assessment will result in a mining operation that reasonably minimizes actual or potential adverse impacts on air, water, and other natural resources and meets the requirements of this act.

(4) Effective 14 days after the department receives an application for a mining permit, the application shall be considered to be administratively complete unless the department proceeds as provided under subsection (5).

(5) If, before the expiration of the 14-day period under subsection (4), the department notifies the applicant that the application is not administratively complete, specifying the information necessary to make the application administratively complete, or notifies the applicant that the fee required to accompany the application has not been paid, specifying the amount due, the running of the 14-day period under subsection

(4) is tolled until the applicant submits to the department the specified information or fee amount due. The notice shall be given in writing or electronically.

(6) Within 42 days after an application for a mining permit is determined to be administratively complete, the department shall hold a public meeting on the application. The department shall give notice of the public meeting not less than 14 or more than 28 days before the date of the public meeting. The notice shall specify the time and place of the public meeting, which shall be held in the county where the proposed mining operation is located, and shall include information on how to review a copy of the application. The notice shall be given in writing to the city, village, or township and the county where the proposed mining operation is to be located and to all affected federally recognized Indian tribes in this state. The notice shall also be given by publication in a newspaper of local distribution in the area where the proposed mining operation is to be located.

(7) The department shall accept written public comment on the permit application for 28 days following the public meeting under subsection (6). Within 28 days after the expiration of the public comment period, the department shall reach a proposed decision to grant or deny a mining permit and shall establish a time and place for a public hearing on the proposed decision. The department shall give notice of the public hearing not less than 14 or more than 28 days before the date of the public hearing. The notice shall be given in writing to the city, village, or township and the county where the proposed mining operation is to be located and to all affected federally recognized Indian tribes in this state. The notice shall also be given by publication in a newspaper of local distribution in the area where the proposed mining operation is to be located. The notice shall contain all of the following:

(a) A summary of the permit application.

(b) Information on how to review a complete copy of the application. The application shall be made available at a public location in the area.

(c) A listing of other permits and hearings that are pending or anticipated under this act with respect to the proposed mining operation.

(d) The time and place of the public hearing, which shall be held in the area where the proposed mining operation is located.

(8) The department shall accept written public comment on the proposed decision to grant or deny a mining permit for 28 days following the public hearing. At the expiration of the public comment period, the department shall issue a report summarizing all comments received and providing the department's response to the comments.

(9) Within 28 days after the expiration of the public comment period under subsection (8), the department shall grant or deny the mining permit application in writing. A determination that an application is administratively complete does not preclude the department from requiring additional information from the applicant. The 28-day period under this subsection shall be tolled until such time as the applicant submits the requested information. If a mining permit is denied, the reasons shall be stated in a written report to the applicant.

(10) A mining permit shall not be issued or transferred to a person if the department has determined that person to be in violation of this part, rules promulgated under this part, the permit, or an order of the department under this part, unless the person has corrected the violation or the person has agreed in writing to correct the violation pursuant to a compliance schedule approved by the department.

(11) Subject to subsection (10), the department shall approve a mining permit if it determines both of the following:

(a) The permit application meets the requirements of this part.

(b) The proposed mining operation will not pollute, impair, or destroy the air, water, or other natural resources or the public trust in those resources, in accordance with part 17 of this act. In making this determination, the department shall take into account the extent to which other permit determinations afford protection to natural resources. For the purposes of this subsection, excavation and removal of nonferrous metallic minerals and of associated overburden and waste rock, in and of itself, does not constitute pollution, impairment, or destruction of those natural resources.

(12) The department shall deny a mining permit if it determines the requirements of subsection (11) have not been met.

(13) Terms and conditions that are set forth in the permit application and the mining, reclamation, and environmental protection plan and that are approved by the department shall be incorporated in and become a part of the mining permit.

(14) A mining permit is not effective until all other permits required under this act for the proposed mining operation are obtained.

(15) If a person submits an application for a mining permit and 1 or more other permits under this act with

respect to a particular mining operation, the department may process the applications in a coordinated fashion to the extent feasible given procedural requirements applicable to individual permits. The coordinated permit process may include consolidating public hearings under this part with public hearings required under other parts of this act. Any notice of a consolidated public hearing shall state clearly which permits are to be considered at the public hearing. An applicant may waive any required timelines under subsections (4) to (9) to facilitate the coordination.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004.

Popular name: Act 451

Popular name: NREPA

324.63207 Mining permit; duration; termination; revocation; transfer; amendment; exceptions.

Sec. 63207. (1) A mining permit issued by the department remains in effect until terminated or revoked by the department.

(2) The department may terminate a mining permit under 1 or more of the following conditions:

(a) The permittee has not commenced construction of plant facilities or conducted actual mining activities covered by the mining permit within 2 years after the effective date of the mining permit.

(b) The permittee has completed final reclamation of the mining area and requests the termination of the mining permit and the department determines all of the following:

(i) The mining operation has not polluted, impaired, or destroyed the air, water, or other natural resources or the public trust in those resources by activities conducted within the scope of the permit.

(ii) The permittee has otherwise fulfilled all conditions determined to be necessary by the department to protect the public health, safety, and welfare and the environment.

(iii) The requirements for the postclosure monitoring period have been satisfied.

(3) The department may revoke a mining permit pursuant to section 63221.

(4) A permittee shall not transfer a mining permit to a new operator unless all of the following occur:

(a) The person acquiring the mining permit submits to the department on forms provided by the department a request for transfer of the mining permit and provides the financial assurance required under section 63211.

(b) The person acquiring the mining permit accepts the conditions of the existing mining permit and adheres to the requirements set forth in this part.

(c) If the department determines that the permittee is in violation of this part or rules promulgated under this part at the mining site involved in the transfer, the permittee has completed the necessary corrective actions or the person acquiring the mining permit has entered into a written consent agreement to correct all of the violations.

(d) The department, after providing public notice of the proposed transfer, approves the transfer.

(5) Pending the transfer of an existing mining permit under subsection (4), the proposed transferee shall not operate the mine.

(6) A mining permit shall be amended as follows:

(a) A mining permit amendment shall be initiated as provided in either of the following:

(i) The permittee submits to the department a request to amend the mining permit to address anticipated changes in the mining operation, including, if applicable, amendments to the environmental impact assessment and to the mining, reclamation, and environmental protection plan.

(ii) The department requires a mining permit to be amended after determining that the terms and conditions of the mining permit are not providing the intended reasonable protection of the environment, natural resources, or public health and safety.

(b) Within 30 days after receiving a request to amend a mining permit under subdivision (a)(i), or upon a determination by the department under subdivision (a)(ii) that an amendment is necessary, the department shall determine whether the proposed amendment constitutes a significant change from the conditions of the approved mining permit. In making that determination, the department shall consider whether the change will result in environmental impacts that are materially increased or different from those addressed in the approved mining permit conditions, the mining permit application, or any additional information forming the basis of the approved mining permit conditions.

(c) If the department determines under subdivision (b) that the request constitutes a significant change from the conditions of the approved mining permit, the department shall in its sole discretion do 1 of the following:

(i) Submit the request for amendment to the same review process as provided for a new permit application in section 63205(4) to (9).

(ii) Within 42 days after the determination that the amendment request constitutes a significant change

from the conditions of the approved mining permit, hold a public meeting on the request. The department shall give notice of the public meeting in the same manner provided for in section 63205(6). The department shall accept written public comment on the request for 28 days after the public meeting. Within 14 days after the expiration of the public comment period, the department shall grant or deny the request in writing.

(d) If the department determines under subdivision (b) that the request for amendment does not constitute a significant change from the conditions of the approved mining permit, the department shall provide written notice of the determination to the city, village, or township and the county where the proposed mining operation is to be located and to all affected federally recognized Indian tribes in this state. The department shall also give notice of the determination by publication in a newspaper of local distribution in the area where the proposed mining operation is to be located. The department shall approve the amendment within 14 days after publication of the notice and shall notify the permittee of the approval.

(7) A permittee may submit to the department a written request to relocate, reconfigure, or modify shafts, tunnels, or other subsurface openings or surface facilities, buildings, or equipment, other than a tailings basin or a stockpile, without obtaining an amendment to the permit under subsection (6). Within 30 days after receiving the request, the department shall grant or deny the request and notify the permittee in writing of the department's determination. Subject to subsection (6)(a)(ii), the department shall grant the request if all of the following apply:

(a) Any proposed relocation, reconfiguration, or modification of shafts, tunnels, or other subsurface openings will not result in subsidence or other adverse environmental impacts. The permittee's request shall include information demonstrating that the requirements of this subdivision, if applicable, are met.

(b) Any proposed relocation, reconfiguration, or modification of surface facilities, buildings, or equipment, other than a tailings basin or a stockpile, will take place within the permitted mining area.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004;—Am. 2018, Act 162, Eff. Aug. 21, 2018.

Popular name: Act 451

Popular name: NREPA

324.63209 Duties of permittee.

Sec. 63209. (1) A permittee shall comply with all other applicable permit standards under this act.

(2) A permittee shall conduct reclamation activities at a mining area in accordance with the approved mining, reclamation, and environmental protection plan.

(3) If mining operations are suspended for a continuous period exceeding 90 days, the permittee shall take actions to maintain, monitor, and secure the mining area and shall conduct any interim sloping or stabilizing of surfaces necessary to protect the environment, natural resources, or public health and safety in accordance with the permit.

(4) Subject to subsection (5), a permittee shall begin final reclamation of a mining area within 3 years of the date of cessation of mining operations and shall complete reclamation within the time set forth in the mining, reclamation, and environmental protection plan approved by the department.

(5) Upon written request of a permittee, the department may approve an extension of time to begin or complete final reclamation.

(6) A permittee shall conduct groundwater and surface water monitoring in accordance with the provisions of the permit during mining operations and during the postclosure monitoring period. The postclosure monitoring period shall be 20 years following cessation of mining, subject to the following conditions:

(a) The permittee shall provide to the department a written request to terminate the postclosure monitoring not less than 18 months before the proposed termination date and shall provide the department with technical data and information demonstrating the basis for the termination. The department shall extend the postclosure monitoring period in increments of up to 20 years unless the department determines, approximately 1 year before the end of a postclosure monitoring period or postclosure incremental monitoring period, that there is no significant potential for water contamination resulting from the mining operation.

(b) The department may shorten the postclosure monitoring period at any time upon determining that there is no significant potential for water contamination resulting from the mining operation.

(7) The department may extend or shorten the postclosure monitoring period under subsection (6) only after public notice and opportunity for a public hearing under section 63219(2).

(8) Both the mining area and the affected area shall be reclaimed and remediated to achieve a self-sustaining ecosystem appropriate for the region that does not require perpetual care following closure and with the goal that the affected area shall be returned to the ecological conditions that approximate premining conditions subject to changes caused by nonmining activities or other natural events. Any portion of the mining area owned by the applicant may be used for any legal purposes.

(9) Compliance with the provisions of this part does not relieve a person of the obligation to comply with all other applicable tribal, state, federal, or local statutes, regulations, or ordinances.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004.

Popular name: Act 451

Popular name: NREPA

324.63211 Financial assurance.

Sec. 63211. (1) An operator shall maintain financial assurance during mining operations until the department determines that all reclamation has been completed and for a postclosure monitoring period as determined under section 63209(6) and (7), except that financial assurance shall be released immediately upon termination of a mining permit under section 63207(2)(a).

(2) The financial assurance required under subsection (1) shall apply to all mining and reclamation operations subject to the mining permit and be sufficient to cover the cost to administer, and to hire a third party to implement, reclamation under the mining, reclamation, and environmental protection plan as well as necessary environmental protection measures, including remediation of any contamination of the air, surface water, or groundwater that is in violation of the mining permit. The financial assurance shall consist of a conformance bond, escrow, cash, certificate of deposit, irrevocable letter of credit, or other equivalent security, or any combination thereof, covering at least 75% of the total required amount. Financial assurance for the balance of the required total amount, if any, shall consist of a statement of financial responsibility.

(3) Every 3 years, or as the department considers necessary, a permittee shall update the statement of financial responsibility required under subsection (2) and shall adjust the conformance bond, escrow, cash, certificate of deposit, irrevocable letter of credit, or other security, as applicable, to assure that the financial assurance is sufficient for the purposes of subsection (2).

(4) The financial assurance mechanism required by this section may be satisfied in whole or in part by financial assurance provisions required by other parts of this act if those provisions address the remediation activities required under this part.

(5) Failure to provide financial assurance under this section constitutes grounds for the department to order immediate suspension of activities at a mining operation, including the removal of metallic product from the site, pursuant to section 63221.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004.

Popular name: Act 451

Popular name: NREPA

324.63213 Mining and reclamation report.

Sec. 63213. (1) A permittee shall file with the department a mining and reclamation report on or before March 15 of each year, during the period the mine is operating and during the postclosure monitoring period. The mining and reclamation report shall contain all of the following:

(a) A description of the status of mining and reclamation operations.

(b) An update of the contingency plan. The permittee shall provide a copy of the update to the emergency management coordinator.

(c) A report of monitoring results for the preceding calendar year.

(d) A report of the total tons of material mined from the mining area, and the amount of metallic product by weight, produced from the nonferrous metallic mineral mine for the preceding calendar year.

(e) A list of the reports required under subsection (2) for the preceding calendar year.

(2) A permittee shall promptly notify the department and each emergency management coordinator having jurisdiction over the affected area of any incident, act of nature, or exceedance of a permit standard or condition at a mining operation that has created, or may create, a threat to the environment, natural resources, or public health and safety.

(3) Records upon which the mining and reclamation reports are based shall be preserved by the permittee for 3 years and made available to the department upon request.

(4) Records upon which incident reports under subsection (2) are based shall be preserved by the permittee for 3 years or until the end of the postclosure monitoring period, whichever is later.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004.

Popular name: Act 451

Popular name: NREPA

324.63215 Surveillance fee.

Sec. 63215. (1) For purposes of surveillance, monitoring, administration, and enforcement of this part, the

department shall assess a permittee a nonferrous metallic mineral surveillance fee of not more than 5 cents per ton of material mined from the mining area as reported under section 63213(1)(d), but not less than \$5,000.00, for each calendar year the mine is in operation and during the postclosure monitoring period. Surveillance fees collected under this section shall be forwarded to the state treasurer for deposit in the nonferrous metallic mineral surveillance fund created in section 63217. The surveillance fee rate shall be calculated each year as follows:

(a) The department shall determine the total tons of material mined from mining areas in this state in the prior calendar year.

(b) The department shall calculate the adjusted appropriation by deducting any unexpended money in the fund at the close of the prior fiscal year from the amount appropriated for the current fiscal year for surveillance, monitoring, administration, and enforcement of this part.

(c) The fee rate shall be the ratio, to the nearest 1/100 of 1%, of the adjusted appropriation to the total tons of material mined.

(2) The nonferrous metallic mineral surveillance fee described in subsection (1) is due by 30 days after the department sends written notice to the permittee of the amount due.

(3) A penalty equal to 10% of the amount due, or \$1,000.00, whichever is greater, shall be assessed against the permittee for a metallic mineral surveillance fee that is not paid when due. The department may file an action in the circuit court for Ingham county to collect the unpaid fee and penalty. The unpaid fee and penalty shall constitute a debt and become the basis of a judgment against the permittee.

(4) Penalties paid pursuant to this section shall be used for the implementation, administration, and enforcement of this part.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004.

Popular name: Act 451

Popular name: NREPA

324.63217 Nonferrous metallic mineral surveillance fund.

Sec. 63217. (1) The nonferrous metallic mineral surveillance 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) Unexpended money in the fund at the close of the fiscal year shall remain in the fund and be carried over to the succeeding fiscal year.

(4) The department shall expend money from the fund, upon appropriation, only for surveillance, monitoring, administration, and enforcement under this part.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004.

Popular name: Act 451

Popular name: NREPA

324.63219 Contested case hearing.

Sec. 63219. (1) A person who is aggrieved by an order, action, or inaction of the department or by the issuance, denial, revocation, or amendment of a mining permit under this part may file a petition with the department requesting a contested case hearing, under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A petition filed more than 60 days after an order, action, or inaction of the department or an action on a mining permit may be rejected as being untimely.

(2) Any hearing under this part shall be held pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The department shall provide notice of the hearing and shall mail copies of the notice to the person requesting the hearing and to the city, village, or township and the county where the proposed mining operation is to be located and to all affected federally recognized Indian tribes in this state. The department shall publish notice of the hearing in a newspaper of local distribution in the area of the mining operation at least 10 days before the hearing.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004.

Popular name: Act 451

Popular name: NREPA

324.63221 Violations.

Sec. 63221. (1) If the department determines that an operator has violated this part, a rule promulgated under this part, or a mining permit issued under this part, the department shall require the operator to correct the violation.

(2) If the department determines that a violation under subsection (1) is causing or resulting in an imminent and substantial endangerment to the public health or safety, environment, or natural resources, the department shall take action necessary to abate or eliminate the endangerment. Such action may include 1 or more of the following:

(a) Revoking the mining permit.

(b) Issuing an order to the operator requiring immediate suspension of activities at the mining operation, including the removal of metallic product from the site.

(c) Issuing an order to the operator to undertake such other response actions as may be necessary to abate or eliminate the endangerment.

(3) Before taking action under this section to suspend operations or revoke a mining permit, or to otherwise prevent the continuation of mining operations, the department shall give written notice, in person or by mail, to the operator. Subject to subsection (4), the department shall provide the operator an opportunity for an evidentiary hearing.

(4) If the department finds that emergency action is required to protect the public health, safety, or welfare, or to protect the environment, the department may issue an emergency order without a public hearing to require an operator to suspend operations or to take other corrective actions. An emergency order shall remain in force and effect for not more than 21 days.

(5) If the operator or surety fails or neglects to correct the violation or take corrective actions as specified under an order of the department, the department may, after giving written notice to the operator and surety, enter in or upon the mining area and upon and across any private or public property necessary to reach the mining area and take whatever action is necessary to curtail and remediate any damage to the environment and public health resulting from the violation, and the operator and surety are jointly and severally liable for all expenses incurred by the department. The claim shall be paid by the operator or surety within 30 days, and, if the claim is not paid within that time, the department may bring suit against the operator or surety, jointly or severally, for the collection of the claim in any court of competent jurisdiction. This part does not limit the department's authority to take whatever response activities it determines necessary to protect the public health, safety, and welfare and the environment.

(6) The revocation of a mining permit or suspension of activities under subsection (2) does not relieve a permittee of the responsibility to complete reclamation, maintain financial assurance required under section 63211, and undertake all appropriate measures to protect the environment, natural resources, and public health and safety.

(7) If the department receives an allegation of improper action under or a violation of this part, a rule promulgated under this part, or a condition of a permit issued under this part, and the person making the allegation provides evidence or corroboration sufficient to support the allegation, as determined by the department, the department shall do all of the following:

(a) Make a record of the allegation.

(b) Conduct an inspection of the mining operation to investigate the allegation not more than 5 business days after receipt of the complaint or allegation. If the complaint or allegation is of a highly serious nature, as determined by the department, the mining operation shall be inspected as quickly as possible. However, an investigation or inspection under this subsection shall comply with the United States constitution, the state constitution of 1963, and this section.

(c) Not more than 15 business days after completing an investigation of the allegation, make a written report of the allegation and the results of the investigation to the operator and the person who made the allegation.

(8) The department shall comply with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, in its actions under this section.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004.

Popular name: Act 451

Popular name: NREPA

324.63223 Civil action; commencement; jurisdiction; relief; fine; violation as felony; penalties; lien.

Sec. 63223. (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. 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 less than \$2,500.00,

and the court may award reasonable attorney fees and costs to the prevailing party. The maximum fine imposed by the court shall be not more than \$25,000.00 per day of violation.

(2) Upon a finding by the court that an operator has violated this part or a provision of a permit or order issued or rule promulgated under this part, and that the violation poses 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.

(3) The attorney general may file a civil suit in a court of competent jurisdiction to recover, in addition to a fine, the full value of the injuries done to the natural resources of this state and the costs of surveillance and enforcement by the state resulting from the violation.

(4) A person who on or after February 1, 2005 intentionally makes a false statement, representation, or certification in an application for or form pertaining to a permit under this part or in a notice or report required by the terms and conditions of a permit issued under this part is guilty of a felony and may be imprisoned for not more than 2 years and shall be fined not less than \$2,500.00 or more than \$25,000.00 for each violation. 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. 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. Knowledge possessed by a person other than the defendant under this subsection may be attributable to the defendant if the defendant took affirmative steps to shield himself or herself from the relevant information.

(5) Upon a finding by the court that the actions taken by a criminal defendant on or after February 1, 2005 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 sentence of 5 years' imprisonment and a fine of not less than \$1,000,000.00.

(6) To find a defendant civilly or criminally liable for substantial endangerment under subsection (2) or (5), 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.

(7) A civil fine or other civil award imposed under this section is payable to this state and shall be credited to the general fund. The fine constitutes a lien on any property, of any nature or kind, owned by the defendant.

(8) A lien under subsection (7) is effective and has 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) If a violation of this part also constitutes a violation of another part of this act, a court may apply a civil fine or penalty for the violation, and each day of continued violation, in accordance with and subject to the penalty limits of the other part.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004.

Popular name: Act 451

Popular name: NREPA

PART 633

MINING AUTHORIZATION, MULTIPLE OWNERS

324.63301 Definitions.

Sec. 63301. The following words and terms as used in this part have the meaning ascribed to them in this section:

(a) "Mineral", when employed in a conveyance, includes every inorganic substance that can be extracted from the earth for profit whether it is solid, as rock, fire clay, the various metals, and coal, or fluid, as mineral waters. Mineral does not include oil or gas.

(b) "Person" means any natural person, corporation, association, partnership, receiver, trustee, judiciary or common law trust, guardian, executor, administrator, or fiduciary of any kind.

(c) "Royalty interest" means that share of the product or profit that the owner of the land or mineral rights in the land reserves or is entitled to, whether under a lease or under this part, in consideration of permitting the development of the mineral rights. Royalty interest does not include oil or gas or interests in oil or gas.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63302 Exploration of certain lands for mining purposes.

Sec. 63302. Whenever lands or mineral rights in lands in this state are owned by tenants in common, joint owners, co-tenants, or co-parceners, whether title is derived by purchase, devise, descent, or otherwise, or whether or not any or all of the owners are minors, the tenants in common, joint owners, co-tenants, or co-parceners who hold not less than 3/4 interest in the title to the lands or mineral rights in the lands may explore, drill, mine, develop, and operate the lands for mining purposes, except for oil and gas, and may remove and transport the minerals or mineral products from the lands or store the minerals or mineral products on the lands and sell and dispose of the minerals and mineral products in the manner provided for in this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63303 Decree of court to lease land; complaint.

Sec. 63303. The owner or owners of not less than 3/4 in interest desiring to lease land or the mineral rights in the land for mining purposes, except for oil and gas, or desiring to explore, drill, develop, or operate the land for minerals or mineral products and to remove the minerals or mineral products from the land, may file a complaint in a circuit court for the county in which the land or a part of the land is located, to obtain a decree of the court authorizing the owner or owners to lease the land or the mineral rights or to explore, drill, mine, develop, and operate the land for mining purposes, except for oil and gas, and remove and transport minerals or mineral products from the land or store the minerals or mineral products on the land of all owners of the land. The complaint shall set forth the relevant facts and the interests of all persons to the extent these are known to the plaintiffs.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63304 Decree of court; distribution of proceeds.

Sec. 63304. If the court finds that the material assertions of the complaint are true and that the plaintiffs do own the required interest in the land or mineral rights as joint tenants, tenants in common, co-tenants, or co-parceners, or that the required proportion in interest of such owners consent to the granting of the relief prayed in the complaint, the court shall enter a decree authorizing the plaintiffs to lease for exploring, drilling, mining, and operating the land for mining purposes, except for oil and gas, and to remove the minerals or mineral products from the land and sell or dispose of the minerals or mineral products so as to realize the full value of the minerals or mineral products for the benefit of all entitled parties. The defendants and minority interest holders, whether owner of fee or royalty interests or their lessees, shall participate in their proportionate share of the proceeds derived from the sale of minerals or mineral products produced from the land. If the court finds that a lease of a royalty interest should be granted, the terms and conditions of the lease shall be fixed by the court in its decree, but the royalty payable to the royalty interest shall not be less than 1/10 of the minerals or mineral products or the value of the minerals or mineral products as produced and severed from the land at the point of production. The court shall provide by decree for the disposition by the plaintiffs of the proportionate part of the proceeds from the sale of the defendants' portion of the minerals or mineral products produced and shall provide for the payment and distribution of the proceeds to the defendants as their respective interests may appear, after deduction of the proportionate costs of the proceedings and those other expenses incurred by the plaintiffs that are approved by the court.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63305 Deposit with clerk of court when defendant is unknown.

Sec. 63305. If the whereabouts of any of the defendants is unknown, the court may require the plaintiffs to deposit those defendants' share of the net proceeds from minerals or mineral products with the clerk of the court, to be held for the defendants, as the court may direct.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63306 Suits by lessees.

Sec. 63306. If a person or persons holding not less than a 3/4 interest in the land has or have executed a mineral lease or leases to any person, the lessee or lessees may institute and maintain or defend any suit provided for by this part, either in the name of the lessee or in the name of his or her lessor.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

CHAPTER 634 SMALL NATIVE COPPER MINES

324.63401 Definitions.

Sec. 63401. As used in this part:

(a) "Administratively complete" refers to an application for a mining permit under this part that includes the fee and all of the documents and other information required under this part and any rules promulgated under this part.

(b) "Conformance bond" means a surety bond that has been executed by a surety company authorized to do business in this state, cash, a certificate of deposit, a letter of credit, or other security filed by a person and accepted by the department to ensure compliance with this part or rules promulgated under this part.

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

(d) "Fund" means the small native copper mine surveillance fund created in section 63415.

(e) "Life of the mine" means the period from initiation of mining activities through the completion of reclamation.

(f) "Mine" or "mining" means an operation to excavate or remove earth material that generates not less than 10,000 tons and not more than 75,000 tons of waste rock in a calendar year or disturbs not less than 1 acre and not more than 10 acres of land in a calendar year in the regular operation of a business for the primary purpose of extracting native copper by 1 or both of the following:

(i) Removing the overburden lying above natural deposits of native copper and excavating directly from the natural deposits thus exposed or by excavating directly from deposits lying exposed in their natural state.

(ii) Excavating from below the surface of the ground by means of shafts, tunnels, or other subsurface openings.

(g) "Mining activity" means any of the following activities within a mining area for the purpose of, or associated with, mining:

(i) Clearing and grading of land.

(ii) Drilling and blasting.

(iii) Excavation of earth materials to access or remove ore.

(iv) Crushing, grinding, or separation activities.

(v) Reclamation.

(vi) Transportation of overburden, waste rock, ore, and tailings within the mining area.

(vii) Storage, relocation, and disposal of overburden, waste rock, ore, and tailings within a mining area, including backfilling of mined areas.

(viii) Construction of water impoundment and drainage features.

(ix) Construction of haul roads.

(x) Construction of utilities or extension of existing utilities.

(xi) Withdrawal, transportation, and discharge of water in connection with mining.

(h) "Mining area" means all of the following:

(i) Land from which material is removed by surface or open pit mining methods.

(ii) Land on which adits, shafts, or other openings between the land surface and underground mine workings are located.

(iii) Land on which material from mining is deposited.

(iv) Land on which crushing, grinding, or separation facilities are located.

(v) Land on which water reservoirs used in connection with mining are located.

(i) "Mining permit" or "permit" means a permit issued under section 63405 for conducting mining activities.

(j) "Native copper" means copper in its elemental form.

(k) "Operator" means a person that is engaged in or preparing to engage in mining activities, whether individually or jointly, or through agents, employees, or contractors, and that has overall responsibility for the mining activities.

(l) "Permittee" means a person that holds a mining permit.

(m) "Waste rock" means earth material that is excavated during mining, from which the economically recoverable native copper has been separated, and that is stored on the surface for 1 year or more. Waste rock does not include earth material from excavation or grading done in preparation for commencement of mining.

History: Add. 2017, Act 40, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

324.63403 Enforcement and administration of part; rules; inspection and investigation by department; regulation by local governmental unit; restrictions.

Sec. 63403. (1) The department shall administer and enforce this part. In addition to other powers granted to it, the department may promulgate rules it considers necessary to carry out its duties under this part.

(2) The department may enter at any reasonable time in or upon a mining area for the purpose of inspecting and investigating conditions relating to mining activities.

(3) Subject to subsections (4) and (5), a local unit of government shall not regulate or control mining or reclamation activities that are subject to this part, including construction, operation, closure, postclosure monitoring, reclamation, and remediation activities, and does not have jurisdiction concerning the issuance of permits for those activities.

(4) A local unit of government may enact, maintain, and enforce ordinances or regulations affecting mining if the ordinances or regulations do not duplicate, contradict, or conflict with this part and are reasonable in accommodating customary mining activities.

(5) Subsections (3) and (4) do not prohibit a local unit of government from conducting water quality monitoring.

History: Add. 2017, Act 40, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

324.63405 Mining permit; application.

Sec. 63405. (1) A person shall not engage in mining activities except as authorized by a mining permit issued by the department. A separate mining permit is required for each mine.

(2) An application for a mining permit shall be submitted by the operator to the department on a form prescribed by the department. The application shall include all of the following:

(a) A permit application fee of \$5,000.00. The department shall forward the permit application fee to the state treasurer for deposit in the fund.

(b) Provisions for a conformance bond as described in section 63409.

(c) A mining and reclamation plan as described in subsection (3) that addresses mining activities proposed in the application.

(3) The mining and reclamation plan required in subsection (2) shall include all of the following:

(a) A map or maps showing the locations and dimensions of the following:

(i) Proposed adits, shafts, underground mine workings, and surface pits.

(ii) Proposed overburden, waste rock, and ore stockpiles.

(iii) Any crushing, grinding, or separation equipment that will be utilized.

(b) A description of the mining methods that will be utilized.

(c) Plans and descriptions of measures that will minimize soil erosion and sedimentation during mining activities.

(d) A map and description of fencing or other techniques to minimize public safety hazards.

(e) Plans and schedules for reclamation of the mining area following cessation of mining activities. The plans and schedules shall address mining activities proposed in the application and provide for grading, revegetation, and stabilization that will do all of the following:

(i) Minimize soil erosion and sedimentation.

(ii) Protect public safety.

(iii) Establish conditions that promote future beneficial use and do not require perpetual care.

(f) Plans and schedules for baseline water quality sampling, which must be conducted before mining commences. Samples shall be collected from the existing water supply wells available for sampling and located within 1,320 feet of the proposed mining area. However, samples are not required from more than 3

such water supply wells. In addition, samples shall be collected from the nearest surface water body located within 1,320 feet of the proposed mining area, if any. The samples shall be analyzed for pH, copper, and nitrate using laboratory methods approved by the United States Environmental Protection Agency.

(4) Within 7 days after receiving an application for a mining permit, the department shall give notice in writing to the county and municipality where the mine is proposed to be located of the specific location of the proposed mine. Within 14 days after receiving an application for a mining permit, the department shall publish notice of the application in a newspaper of local distribution in the area of the proposed mine and shall post a copy of the application on its website.

(5) Subject to subsection (6), effective 14 days after the department receives an application for a mining permit, the application shall be considered to be administratively complete.

(6) If, before the date indicated by subsection (5), the department notifies the applicant that the application is not administratively complete, specifying the information or fee necessary to make the application administratively complete, the running of the 14-day period under subsection (5) is tolled until the applicant submits to the department the specified information or fee.

(7) Subject to subsection (8), the department shall grant or deny a mining permit within 45 days after an application is considered or determined to be administratively complete under subsection (5) or (6). If a mining permit is denied, the reasons shall be stated in a written report to the applicant.

(8) If the department determines that information in the application is insufficient to determine whether a permit may be granted, the department may request additional information or clarification from the applicant. The 45-day period under subsection (7) is tolled until the applicant submits the requested information.

History: Add. 2017, Act 40, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

324.63407 Mining permit; validity; revocation; termination; transfer; amendment.

Sec. 63407. (1) A mining permit is valid for the life of the mine. However, the department may revoke a permit if the permittee has not commenced mining activities covered by the permit within 3 years after the date of issuance of the permit.

(2) The department may terminate a mining permit upon request of the permittee if the department determines that the permittee has complied with all applicable provisions of this part.

(3) A mining permit may be transferred with approval of the department. The person seeking to acquire the permit shall submit a request for transfer of the permit to the department on forms provided by the department. The person acquiring the permit shall accept the conditions of the existing permit and adhere to the requirements set forth in the approved mining and reclamation plan and provide a conformance bond as set forth in section 63409. Pending the transfer of the existing permit, the person seeking to acquire the permit shall not operate the mine.

(4) A mining permit shall not be transferred to a person who has been determined by the department to be in violation of this part, rules promulgated under this part, or a condition of a permit issued under this part, until the person acquiring the permit has corrected the violation or the department has accepted a compliance schedule and the person that will acquire the permit has entered into a written consent agreement to correct the violation.

(5) If the permittee has been notified by the department of a violation of this part, rules promulgated under this part, or a condition of the permit issued under this part at the mining area involved in the transfer, the mining permit shall not be transferred to a person until the permittee has corrected the violation or the person that will acquire the permit has entered into a written consent agreement to correct the violation.

(6) A mining permit may be amended upon submission to the department of a request by the permittee. The department shall determine whether the requested amendment constitutes a significant change to the mining and reclamation plan. If the department determines that the requested amendment constitutes a significant change, the department shall submit the request for amendment to the same review process as provided for a new permit application in section 63405(4) to (8). If the department determines that the requested amendment does not constitute a significant change, the department shall approve the request within 14 days after receiving the request.

History: Add. 2017, Act 40, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

324.63409 Conformance bond; amount; duration; violation.

Sec. 63409. (1) For each mine, an operator shall maintain a conformance bond in the amount of \$50,000.00

during mining activities and until the department determines that all reclamation has been completed in compliance with the mining permit.

(2) If an operator violates subsection (1), the department may order immediate suspension of mining activities, including the removal of native copper from the site.

History: Add. 2017, Act 40, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

324.63411 Mine operator; compliance with applicable requirements; duties upon suspension of mining activities; beginning and completing final reclamation of mining area; time period; extension; compliance with other applicable state or federal statutes or regulations.

Sec. 63411. (1) An operator shall comply with all other applicable requirements of this act.

(2) An operator shall conduct mining activities at a mining area in conformance with the approved mining and reclamation plan.

(3) If mining activities are suspended for a continuous period exceeding 240 days, the operator shall maintain, monitor, and secure the mining area and shall conduct any interim sloping or stabilizing of surfaces necessary to protect the environment, natural resources, or public health and safety in accordance with the mining permit.

(4) Subject to subsection (5), an operator shall begin final reclamation of a mining area within 3 years after the date of cessation of other mining activities and shall complete reclamation within the time set forth in the mining and reclamation plan approved by the department under section 63405.

(5) Upon written request of the operator, the department may approve an extension of time to begin or complete final reclamation.

(6) Compliance with this part does not relieve a person of the responsibility to comply with all other applicable state or federal statutes or regulations.

History: Add. 2017, Act 40, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

324.63413 Fees and penalties.

Sec. 63413. (1) For purposes of surveillance, monitoring, administration, and enforcement of this part, an operator shall pay the department by February 15 of each year an operating fee of \$5,000.00 for each mine where mining activities were ongoing as of December 31 of the previous year. The fee is due each year until the mining activities cease and the department has released the conformance bond.

(2) The department shall assess a penalty equal to 2% of the amount due against the operator for each month or part of a month during which an operating fee has not been paid after the due date.

(3) The department shall forward all annual operating fees and penalties collected under this section to the state treasurer for deposit in the fund.

History: Add. 2017, Act 40, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

324.63415 Small native copper mine surveillance fund; creation; deposit of money or other assets; investment; interest and earnings; money remaining at close of fiscal year; expenditures.

Sec. 63415. (1) The small native copper mine surveillance 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 surveillance, monitoring, administration, and enforcement under this part.

History: Add. 2017, Act 40, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

324.63417 Failing or neglecting to perform reclamation in conformance with part or rules; notice of determination; service; reclamation to be conducted by department; liability for expenses of department; claim; order to immediately suspend mining activities; findings; duration; extension; action by attorney general.

Sec. 63417. (1) If the department determines that an operator has failed or neglected to perform reclamation in conformance with this part or rules promulgated under this part, the department shall give notice of this determination, in writing, to the operator and to the surety executing the conformance bond under section 63409. The notice of determination shall be served upon the operator and surety in person or by registered mail. If the operator or surety fails or neglects to properly commence the required reclamation within 90 days after the date of personal service or mailing of the notice or fails to proceed with reclamation at a rate that will conclude the reclamation within the period specified in the mining and reclamation plan, the department may enter into and upon any private or public property on which the mining area is located and upon and across any private or public property necessary to reach the mining area and conduct necessary reclamation, and the operator and surety are jointly and severally liable for all expenses incurred by the department. The department shall certify to the operator and surety the claim of this state in writing, listing the items of expense incurred in reclamation. The claim shall be paid by the operator or surety within 30 days. If the claim is not paid within that time, the department may bring suit against the operator or surety, jointly or severally, for the collection of the claim in any court of competent jurisdiction in Ingham County.

(2) The department may order immediate suspension of any mining activities if the department finds that there exists an emergency endangering the public health and safety or an imminent threat to the natural resources of this state.

(3) An order suspending mining activities under subsection (2) shall be in effect until the endangerment to the public health and safety or the threat to the natural resources has been eliminated, but not more than 10 days. To extend the suspension beyond 10 days, the department shall issue an emergency order to continue the suspension of mining activities and shall schedule a hearing as provided by the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The total duration of the suspension of activities shall not be more than 30 days.

(4) At the request of the department, the attorney general may institute an action in a circuit court of the county in which the mining area is located for a restraining order or injunction or other appropriate remedy to prevent or preclude a violation of this part or a rule promulgated under this part.

History: Add. 2017, Act 40, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

324.63418 Mining of earth material having significant acid-forming or leachable characteristics; exception.

Sec. 63418. Mining of earth material that has significant acid-forming or leachable characteristics is not subject to this part.

History: Add. 2017, Act 40, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

PART 635

SURFACE AND UNDERGROUND COAL MINE RECLAMATION

SUBPART 1

GENERAL PROVISIONS

324.63501 Meanings of words and phrases defined in MCL 324.63502 and 324.63503.

Sec. 63501. For the purposes of this part, the words and phrases defined in sections 63502 and 63503 have the meanings ascribed to them in those sections.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63502 Definitions; A to O.

Sec. 63502. (1) "Agricultural land" includes any of the following as determined by the department of

natural resources under this part or part 609 with the concurrence of the department of agriculture and rural development and the United States Department of Agriculture:

(a) Prime farmland, which is land that is determined to have the best combination of physical and chemical characteristics for producing food, feed, forage, and fiber crops and is also available for these uses, including cropland, pastureland, rangeland, forestland, or other land, but not urban built-up land or water. Prime farmland has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods. In general, prime farmland has an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. Prime farmland is permeable to water and air. Prime farmland is not excessively erodible or saturated with water for a long period of time, and it either does not flood frequently or is protected from flooding.

(b) Unique farmland, which is land other than prime farmland that is determined to have value for the production of specific high-value food and fiber crops. Unique farmland has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields or both high quality and high yields of a specific crop when treated and managed according to acceptable farming methods. Unique farmland includes those areas containing organic soils producing vegetables and specialty crops; high-lying and relatively frost-free fruit sites; and areas of high water table acid soils especially suited to highbush blueberry culture as well as the areas in the Upper Peninsula copper country that are producing strawberries.

(c) Other farmland, which is land other than prime farmland and unique farmland that is determined to have a combination of soils, location, and management characteristics that is producing or can produce in or for a region food, feed, forage, and fiber crops and is land on which agriculture represents the greatest current economic return from the land. Other farmland includes beef cow-calf operations that occur on generally fine-textured, somewhat poorly drained soils well-suited to forage production and grazing. Other farmland includes cropland areas that by their location are especially suited for the production of disease-free seed crops or that offer special opportunities for integrated best management programs.

(2) "Applicant" means a person applying for a permit from the department to conduct surface coal mining activities or underground coal mining activities pursuant to this part.

(3) "Approximate original contour" means that surface configuration achieved by the backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated.

(4) "Coal" means all forms of coal including lignite. Coal does not include clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substance of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal, and those minerals that occur naturally in liquid or gaseous form.

(5) "Coal exploration operation" means the substantial disturbance of the surface or subsurface for the purpose of or related to determining the location, quantity, or quality of a coal deposit.

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

(7) "Eligible land and water" means all land that was mined for coal or was affected by that mining, wastebanks, coal processing, or other coal mining processing, and abandoned or left in an inadequate reclamation status under the standards provided in subparts 3 and 4 prior to August 3, 1977, and for which there is not a continuing reclamation responsibility under state or federal law.

(8) "Historic resource" means a district, site, building, structure, or object of historical, architectural, archeological, or cultural significance that meets any of the following requirements:

(a) Is designated as a national historic landmark pursuant to the historic sites, buildings, and antiquities act, 54 USC 102303, 102304, 320101 to 320104, and 320106.

(b) Is listed on the national register of historic places pursuant to the national historic preservation act, 54 USC 300101, 300301 to 300305, 300307 to 300311, 300313 to 300320, 302101 to 302108, 302301 to 302304, 302501 to 302505, 302701 to 302706, 302901 to 302910, 303101 to 303103, 303901 to 303903, 304101 to 304112, 305501 to 305505, 306101 to 306114, 306121, 306122, 306131, and 307101 to 307108, or the state register of historic sites pursuant to the Governor John B. Swainson Michigan historical markers act, 1955 PA 10, MCL 399.151 to 399.160.

(c) Is recognized under a locally established historic district created pursuant to the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215.

(d) Is eligible for listing, designation, or recognition under subdivisions (a) to (c).

(9) "Imminent danger to the health and safety of the public" means the existence of any condition or

practice, or any violation of a permit or other requirement of this part in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a reasonable person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

(10) "Local unit of government" means a county, city, township, or village; a board, commission, or authority of a county, city, township, or village; or a soil conservation district.

(11) "Operator" means a person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by coal mining within 12 consecutive calendar months in any 1 location.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 78, Eff. Aug. 6, 2001;—Am. 2017, Act 186, Eff. Feb. 19, 2018.

Popular name: Act 451

Popular name: NREPA

324.63503 Definitions; P to U.

Sec. 63503. (1) "Permit" means a permit issued by the department to conduct surface coal mining and reclamation operations.

(2) "Permit area" means the area of land indicated on the approved map submitted by the operator with the operator's application, which area of land is covered by the operator's bond required by section 63529 and is readily identifiable by appropriate markers on the site.

(3) "Permittee" means a person holding a permit to conduct surface coal mining and reclamation operations or underground mining activities pursuant to this part.

(4) "Reclamation plan" means a plan submitted by an applicant which provides a plan for reclamation of the proposed surface coal mining operations pursuant to section 63518.

(5) "Soil conservation district" means a soil conservation district established and operating pursuant to part 93.

(6) "Surface coal mining and reclamation operations" means surface mining operations and all activities necessary and incident to the reclamation of those operations conducted in this state after August 3, 1977.

(7) "Surface coal mining operations" means:

(a) Activities conducted in this state on the surface of any land in connection with a surface coal mine or subject to the requirements of section 63532 incident to an underground coal mine. These activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area and any other areas impacted by the surface coal mining operation mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal at or near the mine site.

(b) The areas on which activities described in subdivision (a) occur or where those activities disturb the natural land surface, including adjacent land the use of which is incidental to those activities; all land affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage; and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas on which are sited structures or facilities; or other property or materials on the surface, resulting from or incident to those activities.

(8) "Surface mining control and reclamation act of 1977" means Public Law 95-87, 91 Stat. 445.

(9) "Title IV of the surface mining control and reclamation act of 1977" means title IV of Public Law 95-87, 30 U.S.C. 1231 to 1243.

(10) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of this part due to indifference, lack of diligence, or lack of reasonable care or the failure to abate any violation of his or her permit or this part due to indifference, lack of diligence, or lack of reasonable care.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63504 Assumption by state of exclusive jurisdiction over regulation of surface coal mining and reclamation operations in state; purpose of part.

Sec. 63504. Pursuant to the authority granted in section 503 of title V of the surface mining control and reclamation act of 1977, the state of Michigan shall have exclusive jurisdiction over the regulation of surface coal mining and reclamation operations in this state.

reclamation act of 1977, Public Law 95-87, 30 U.S.C. 1253, that allows a state to assume and retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within that state by obtaining approval of a state program that has the capability of implementing and enforcing the provisions and purposes of the surface mining control and reclamation act of 1977, this state wishes to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations in this state. It is the purpose of this part to provide a state plan to implement and enforce the purposes provided in section 102 of title I of the surface mining control and reclamation act of 1977, Public Law 95-87, 30 U.S.C. 1202.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63505 Exclusive jurisdiction of department over surface coal mining and reclamation operations in state; construction of part.

Sec. 63505. The department has exclusive jurisdiction over all surface coal mining and reclamation operations in this state. This part shall not be construed as preempting a zoning ordinance enacted by a local unit of government or impairing a land use plan adopted pursuant to a law of this state by a local unit of government.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63506 Powers of department.

Sec. 63506. To implement this part, the department has the following powers:

(a) To promulgate and enforce rules pertaining to surface coal mining and reclamation operations consistent with the general intent and purposes of this part.

(b) To issue permits pursuant to this part.

(c) To conduct hearings pursuant to this part and 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.

(d) To issue orders requiring an operator to take actions that are necessary to comply with this part and with rules promulgated under this part.

(e) To issue orders modifying previous orders.

(f) To issue a final order revoking the permit of an operator who has failed to comply with an order of the department requiring the operator to take action required by this part or rules promulgated under this part.

(g) To order the immediate cessation of an ongoing surface mining operation or part of an ongoing surface mining operation if the department finds that the operation or part of the operation creates an imminent danger to the health and safety of the public, or is causing or can reasonably be expected to cause significant imminent harm to land, air, or water resources, and to take other action or make changes in a permit that are reasonably necessary to avoid or alleviate these conditions.

(h) To enter on and inspect a surface mining operation that is subject to this part to assure compliance with this part.

(i) To conduct, encourage, request, and participate in studies, surveys, investigations, research, experiments, training, and demonstrations by contract, grant, or otherwise.

(j) To prepare and require permittees to prepare reports.

(k) To accept, receive, and administer grants pursuant to section 407(e) of title IV of the surface mining control and reclamation act of 1977 and accept, receive, and administer grants, gifts, loans, or other funds made available from any other source for the purposes of this part.

(l) To take those steps necessary to ensure that the state may participate to the fullest extent practicable in the abandoned land program provided in title IV of the surface mining control and reclamation act of 1977.

(m) To take those actions necessary to establish exclusive jurisdiction over surface coal mining and reclamation in this state under the provisions of this part and the surface mining control and reclamation act of 1977, including, in the event the federal administrative agency disapproves this state's program as submitted, making recommendations for remedial legislation to clarify, alter, or amend the program to meet the terms of the surface mining control and reclamation act of 1977.

(n) To enter into contracts with other state agencies that have pertinent expertise to obtain the professional and technical services necessary to implement this part.

(o) To establish a process, in order to avoid duplication, for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other federal or state permit process applicable to the proposed operations.

(p) To enter into cooperative agreements with the secretary of the United States department of the interior for the regulation of surface coal mining operations on federal land in accordance with the surface mining control and reclamation act of 1977.

(q) To perform any other duties and acts required by and provided for in this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63507 Rules.

Sec. 63507. (1) The department shall promulgate rules pertaining to surface coal mining and reclamation operations that are required by this part.

(2) A rule promulgated or a permit issued by the department may differ in its terms and provisions as to particular permit conditions, types of coal being extracted, particular areas of the state, or any other conditions that appear relevant and necessary if the action taken is consistent with attainment of the general intent and purposes of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63508 Information submitted to department, other state agency, or local unit of government as public record; confidential information; rules.

Sec. 63508. Except when confidentiality is provided in this part, information submitted to the department, other state agency, or local unit of government pursuant to this part shall be a public record as provided in 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. Information that pertains only to the analysis of the chemical and physical properties of coal, excepting information regarding such mineral or elemental content that is potentially toxic in the environment, or information that pertains to the exact location of archeological sites shall be kept confidential and is not a public record. The department shall promulgate rules establishing a procedure to determine whether information that pertains only to the analysis of the chemical and physical properties of the coal shall be kept confidential.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 2

ABANDONED MINE RECLAMATION

324.63509 Participation in abandoned mines reclamation fund established by title IV of surface mining control and reclamation act of 1977; authorization; action; procedures.

Sec. 63509. The department is authorized to take all action necessary to ensure participation to the fullest extent practicable in the abandoned mines reclamation fund established by title IV of the surface mining control and reclamation act of 1977, and to function as the state's agency for that participation relative to coal mining. Pursuant to this part and title IV of the surface mining control and reclamation act of 1977, the department shall establish procedures for the designation of the land and water eligible for reclamation or abatement expenditures; for the submission of reclamation plans, annual projects, and applications to the appropriate authorities pursuant to the terms of this part and title IV of the surface mining control and reclamation act of 1977; and for the administration of all money received for abandoned mine reclamation or related purposes.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63510 State abandoned mine reclamation fund; creation; administration; investment of money; use of interest and earnings; money deposited in fund; carrying over remaining money; expenditures.

Sec. 63510. (1) The state abandoned mine reclamation fund is created in the state treasury and shall be administered by the department. The state treasurer shall direct the investment of money in the fund. The interest and earnings of the fund shall be used exclusively for the purposes specified in subsection (4).

(2) The following money shall be deposited in the fund:

(a) All funds from the application fees imposed under subpart 3, the inspection and reclamation fees imposed under subpart 9, and the civil fines imposed under subpart 8.

(b) All funds made available to the department for the purposes specified in subsection (4) pursuant to title IV of the surface mining control and reclamation act of 1977.

(c) All funds which may be donated to the department for the purposes specified in subsection (4) by any person.

(3) Any money remaining in the fund at the end of a fiscal year shall be carried over in the fund to the next and succeeding fiscal years and shall only be used for the purposes specified in subsection (4).

(4) Expenditure of money from the state abandoned mine reclamation fund shall be made as follows:

(a) Money that is deposited in the fund under subsection (2)(b) shall reflect the following priorities in the order stated:

(i) The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices.

(ii) The protection of public health, safety, and general welfare from adverse effects of coal mining practices.

(iii) The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices including measures for the conservation and development of soil; water, excluding channelization; woodland, fish, and wildlife; recreation resources; and agricultural productivity.

(iv) Research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques.

(v) The protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by coal mining practices.

(vi) The development of publicly owned land adversely affected by coal mining practices including land acquired as provided in this part for recreation and historic purposes, conservation, and reclamation purposes and open space benefits.

(b) Money that is deposited in the fund under subsection (2)(a) or (c) for any of the expenditures authorized in subdivision (a) and for any other purpose of this part including the cost of administering this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63511 Entry on private property by department; purposes; conditions; notice; money expended and benefits accruing to property chargeable against land; mitigating or offsetting claim in action by owner for damages; acquisition by department of land adversely affected by past coal mining practices; sale or transfer of acquired land suitable for development; rules; grant; public hearings.

Sec. 63511. (1) The department may, in the manner provided in this section, enter on private property for the purposes of conducting an investigation, inspection, study, or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of those adverse effects.

(2) The department may enter on property as provided in subsection (3) if all of the following conditions exist:

(a) The land or water resources on the property have been adversely affected by past coal mining practices.

(b) The adverse effects to land or water resources on the property are at a stage where, in the public interest, action should be taken to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(c) The department gives notice by certified mail, return receipt requested, to the record owner or owners of the property requesting permission to enter on the property.

(d) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known, or readily identifiable; or the owners of the property will not give permission, after receiving notice under subdivision (c), for the state or local unit of government to enter on the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(3) After giving notice by certified mail, return receipt requested, to the record owner or owners of the property; posting notice on the property; and advertising for 4 consecutive weeks in a newspaper of general

circulation in the county in which the property is located, the department may enter on property adversely affected by the past coal mining practices and any other property necessary to have access to the property to take those actions necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. The money expended to restore, reclaim, abate, control, or prevent the adverse effects and the benefits accruing to the property entered on is chargeable against the land and shall mitigate or offset any claim in an action brought by the owner of any interest in the property for damages by virtue of the entry. This subsection is not intended to create new rights of action or eliminate existing immunities.

(4) The department may acquire land by purchase, donation, or condemnation that is adversely affected by past coal mining practices if the department determines that acquisition of the land is in the public interest, is necessary to successful reclamation, and either subdivision (a) or (b) applies:

(a) The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes, or provide open space benefits; and permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(b) Acquisition of coal refuse disposal sites and all coal refuse on the acquired land will serve the purposes of this section or is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

(5) The price paid for land acquired pursuant to this section shall reflect the market value of the land taking into consideration its current use and its condition as adversely affected by past coal mining practices.

(6) If land acquired pursuant to this section is considered suitable for agricultural, industrial, commercial, residential, or recreational development, the state may sell or transfer the land pursuant to rules promulgated by the department and procedures provided by law to ensure that the land is put to proper use consistent with the land use plans of local units of government. If a grant accepted pursuant to section 63506(k) is involved in the acquisition of the land to be sold, the land may be sold only when authorized by the secretary of the United States department of the interior. The department shall hold a public hearing 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, in the county or counties of the state in which land acquired pursuant to this section is located. The hearings shall afford local citizens and local units of government an opportunity to participate in the decision concerning the use or disposition of the land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63512 Itemizing money expended to complete project; filing statement of account and appraisal with county clerk; filing of lis pendens with statement of account and appraisal as lien on land; priority; amount; lien not to be filed against certain property; petition for hearing concerning amount of lien; appeal.

Sec. 63512. (1) Within 6 months after the completion of a project to restore, reclaim, abate, control, or prevent the adverse effects of past mining practices on privately owned property, the department shall itemize the money expended to complete the project and shall file an account of the money expended with the clerk of the county in which the property is located, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices if the money so expended will result in a significant increase in property value. The filing of lis pendens with a copy of the statement of account and the appraisal constitutes a lien on the land second in priority only to a lien for delinquent property taxes placed on the property pursuant to section 40 of the general property tax act, Act No. 206 of the Public Acts of 1893, being section 211.40 of the Michigan Compiled Laws. The lien shall not exceed the amount of the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices. A lien shall not be filed against the property of a person who was a record owner of the surface rights in the property prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices.

(2) An affected landowner may petition the department within 60 days of the filing of the lien for a hearing concerning the amount of the lien. That hearing and any appeal shall be conducted under chapter 4 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.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63513 Expenditures from state abandoned mine reclamation fund for emergency restoration, reclamation, abatement, control, or prevention of adverse effects; conditions; entry on land where emergency exists as exercise of police power; warrant; action for damages; intent of subsection (2).

Sec. 63513. (1) The department may expend money from the state abandoned mine reclamation fund created by section 63510 for the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining practices on eligible land, if the department finds that all the following conditions exist:

(a) An emergency exists constituting a danger to the public health, safety, or general welfare.

(b) No other person, state agency, or local unit of government has commenced actions or operations on the eligible land to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(2) The department may enter on any land where the emergency exists and any other land necessary to have access to the land where the emergency exists to take those actions necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare, if the department has obtained a warrant authorizing that entry. Entry pursuant to this subsection is an exercise of the police power and not an act of condemnation or trespass. If the owner of any interest in the property brings an action for damages because of an entry made pursuant to this subsection, the money expended to restore, reclaim, abate, control, or prevent the adverse effects and the benefits accruing to the property entered on is chargeable against the land and shall mitigate or offset any claim in that action. This subsection does not create new rights of action or eliminate existing immunities.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 3
PERMITS

324.63514 Conduct of surface coal mining operation without permit.

Sec. 63514. A person shall not conduct a surface coal mining operation in this state except as authorized by a permit issued by the department pursuant to part 13.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.63515 Term of permits; continuation of plan by successor in interest; termination of permit; extensions of time to commence operations; conditions.

Sec. 63515. (1) Permits issued pursuant to this part are for a term not to exceed 3 years, except that if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and to open the operation, and if the application is full and complete for the specified longer term, the department may grant a permit for that longer term. A successor in interest to a permittee who applies for a new permit within 30 days of succeeding to that interest and who is able to obtain the same bond coverage pursuant to subpart 5 as the original permittee may continue the surface coal mining and reclamation plan of the original permittee until the successor's application is granted or denied.

(2) A permit shall terminate if the permittee has not commenced the surface coal mining operation covered by the permit within 2 years after commencement of the period for which the permit is issued. However, upon application by the permittee, the department may grant reasonable extensions of time, not to exceed 6 months each, to commence a surface coal mining operation if the permittee demonstrates either of the following:

(a) The extension is necessary because the commencement of the operation has been enjoined by a court of competent jurisdiction.

(b) The extension is necessary because of conditions beyond the control and without the fault or negligence of the permittee.

For a coal lease issued under chapter 85, 41 Stat. 437, 30 U.S.C. 181 to 184, 185 to 188, 189 to 191, 192, 193, 195, 201, 202 to 203, 205 to 208-2, 209, 211 to 214, 223, 224 to 226, 226-2 to 226-3, 228 to 229a, 241, 251, and 261 to 263, commonly known as the mineral lands leasing act of 1920, the department shall not grant extensions of time that extend beyond the period allowed for diligent development under section 7 of chapter 85, 41 Stat. 439, commonly known as the mineral lands leasing act of 1920, 30 U.S.C. 207.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63516 Permit application; contents; submission of certificate of public liability insurance policy to department; policy provisions; maintenance of policy in full force and effect.

Sec. 63516. (1) The permit application shall be submitted to the department and shall contain all of the following:

(a) The names and addresses of the following persons:

(i) The applicant.

(ii) All legal owners of record of the property, surface or mineral, to be mined.

(iii) The holders of record of any leasehold interest in the property to be mined.

(iv) The purchasers of record under a land contract of the property to be mined.

(v) The operator if the operator is a person other than the applicant.

(vi) If the applicant is a partnership, corporation, association, or other business entity, the following where applicable: the names and addresses of every officer, partner, director, or person performing a function similar to a director, of the applicant; the name and address of any person owning of record 10% or more of any class of voting stock of the applicant; and a list of all names under which the applicant, partner, or principal shareholder previously operated a surface mining operation within the United States within the 5-year period preceding the date of submission of the application.

(b) The names and addresses of the owners of record of all surface and subsurface areas adjacent to the permit area.

(c) A statement of any current or previous surface coal mining permits held by the applicant including permit identification, and any pending application.

(d) Information concerning ownership and management of the applicant or operator required by the department by rule.

(e) A statement of whether the applicant or any subsidiary, affiliate, or other person controlled by or under common control with the applicant has ever held a federal, state, or local mining permit which in the 5-year period prior to the date of submission of the application has been suspended or revoked or whether that person has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved.

(f) A copy of an advertisement to be published in a newspaper of general circulation in the locality of the proposed site for 4 consecutive weeks, that indicates the ownership and a description of the location and boundaries of the proposed site sufficiently so that the proposed operation may be readily located, and a statement that the application is available for public inspection at the office of the county clerk of each county in which the proposed permit area is located.

(g) A description of the type and method of coal mining operation that exists or is proposed, the engineering techniques proposed or used, and the equipment used or proposed to be used in the mining operation.

(h) The anticipated or actual starting and termination dates of each phase of the mining operation and the number of acres of land to be affected by each phase of the mining operation.

(i) An accurate map or plan, to scale determined by the department by rule, filed by the applicant with the department clearly showing the land to be affected as of the date of the application, the area of land within the permit area on which the applicant has the legal right to enter and commence surface mining operations, and those documents on which the applicant bases his or her legal right to enter and commence surface mining operations on the area affected, and whether that right is the subject of pending court litigation.

(j) Identification of the watershed and location of the surface streams, tributaries, groundwaters, and county and intercounty drains into which surface, pit drainage, or other waters from the mining operation will be discharged.

(k) A determination of the probable hydrologic consequences of the mining and reclamation operation, if any, both on and off the mine site, with respect to the hydrologic regime; quantity and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions; and the collection of sufficient data for the mine site and surrounding areas so that an assessment

can be made by the department of the probable cumulative impacts of all anticipated mining in the area on the hydrology of the area and particularly on water availability. However, the determination of hydrologic consequences is not required until existing hydrologic information regarding the general area prior to mining is made available from the appropriate federal or state agency, except that the permit shall not be approved until the information is available and is incorporated into the permit application.

(l) The climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, average direction and velocity of prevailing winds, and seasonal temperature ranges.

(m) A statement of the result of test borings or core samplings from the proposed permit area, including logs of the drill holes; the thickness of the coal seam found, and an analysis of the chemical properties of the coal; the sulfur content of any coal seam; a chemical analysis of any potentially acid or toxic-forming sections of the overburden; and a chemical analysis of the stratum lying immediately underneath the coal to be mined. The provisions of this subdivision may be waived by the department with respect to any particular application by a written determination by the department that the information is unnecessary.

(n) A soil survey made or obtained according to standards established by the department of agriculture in order to confirm the exact location of agricultural land, if any, within the proposed permit area. The soil survey shall include the exact location of agricultural land enrolled under part 361.

(o) Accurate maps to scale determined by the department by rule clearly showing both of the following:

(i) The land to be affected as of the date of application.

(ii) All types of information set forth on topographical maps of the United States geological survey of a scale of 1:24,000 or 1:25,000 or larger, including all human-made features and significant known archeological sites existing on the date of application.

The map or plan shall, among other things specified by the department, show all boundaries of the land to be affected, the boundary lines and names of present owners of record of all surface areas adjacent to the permit area, and the location of all buildings within 1,000 feet of the permit area.

(p) Cross-section maps or plans of the land to be affected to a scale determined by the department by rule, including the actual area to be mined, prepared by or under the direction of and certified by a qualified registered professional engineer, or professional geologist with assistance from experts in related fields such as land surveying and landscape architecture, showing pertinent elevation and location of test borings or core samplings and depicting the following information: the nature and depth of the various strata of overburden; the location of subsurface water, if encountered, and its quality; the nature and thickness of any coal or rider seam above the coal seam to be mined; the nature of the stratum immediately beneath the coal seam to be mined; all mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected; existing or previous surface mining limits; the location and extent of any underground mines, including mine openings to the surface; the location of aquifers; the estimated elevation of the water table; the location of spoil, waste, or refuse areas and topsoil preservation areas; the location of all impoundments for waste or erosion control; any settling or water treatment facility; constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; profiles at appropriate cross-sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation plan; and other information required by the department by rule that is consistent with the purposes of this part.

(q) A reclamation plan that meets the requirements of this part and the requirements of the zoning ordinances enacted by a local unit of government.

(r) A determination of the impact on historic preservation concerns including all of the following:

(i) A statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities due to the potential effect of mining on historic resources or whether the area is under study for a designation of unsuitability in an administrative proceeding.

(ii) A description of the historic resources located within the proposed permit area and adjacent areas. The description shall be based on available information, including data in the possession of state and local archeological, historical, and cultural preservation agencies.

(iii) A map showing the boundaries of each historic resource within the permit area and adjacent areas.

(iv) An evaluation of the potential adverse effect that the proposed surface mining operation will have on historic resources within the proposed permit area and adjacent areas.

(v) A statement indicating whether there are feasible and prudent alternatives to the potential adverse effects on historic resources.

(vi) A statement of the measures proposed to prevent, minimize, or mitigate potential adverse effects upon historic resources located within the proposed permit area, including a proposal for recording or salvaging the resources if adverse effects cannot be avoided.

The determination required by this subdivision shall include the name, address, and employment position of each person that the applicant consulted in collecting information on historic resources.

(s) An agricultural impact statement that includes all the following:

(i) The location and boundaries of the proposed mining operation.

(ii) The number of acres to be affected by the proposed mining operation.

(iii) The nature and type of agricultural operations to be affected by the proposed mining operation.

(iv) The nature and extent of the effect of the proposed mining operation on the agricultural operations, including the number and types of buildings and other facilities that will be affected by the mining operation.

(v) The anticipated future effect of the proposed mining operation on adjacent agricultural land that will not be immediately affected by the proposed mining operation.

(vi) The anticipated amount of time, in years and months, during which the area affected by the proposed mining operation will be unsuitable for normal agricultural production.

(vii) The anticipated amount of time, in years and months, required to restore the area affected by the proposed mining operation to the level of productivity it had before it was affected by the mining operation.

(viii) The impact of the proposed mining operation on agriculture generally.

(t) Other data and maps as the department may require by rule that are consistent with the purposes of this part.

(2) An applicant for a surface mining and reclamation permit shall submit to the department as part of its application a certificate issued by an insurance company authorized to do business in this state certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which the permit is sought. The policy shall provide for personal injury and property damage protection consistent with the standards established in section 63528 in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including the use of explosives, and entitled to compensation under the applicable provisions of state law. The policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63517 Renewal of permit.

Sec. 63517. (1) A permit issued pursuant to this part includes the right of successive renewal on expiration with respect to areas within the boundaries of the existing permit. The permittee may apply for renewal and except as provided in subsection (2) the renewal shall be issued.

(2) A permit shall not be renewed if, after a hearing conducted pursuant to section 63523, it is established and the department makes written findings that any of the following conditions exist:

(a) The terms and conditions of the existing permit are not being satisfactorily met by the permittee.

(b) The present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this part and the approved state plan or federal program pursuant to the surface coal mining and reclamation act of 1977.

(c) The renewal requested substantially jeopardizes the operator's continuing responsibility for reclamation established under this part on existing permit areas.

(d) The operator has not provided evidence that the performance bond in effect for the operation or any additional bond the department might require pursuant to section 63529 will continue in full force and effect for the renewal requested in the application.

(e) Additional revised or updated information required by the department by rule has not been provided by the permittee.

(3) Before the renewal of a permit, the department shall provide notice to the appropriate persons, local units of government, and interested parties.

(4) If an application for renewal of an existing permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application that addresses new land areas is subject to the full standards applicable to a new application under this part.

(5) A permit renewal shall be for a term not to exceed the period of the existing permit established by this part. Application for permit renewal shall be made at least 120 days before the expiration of the existing permit.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63518 Reclamation plan; contents.

Sec. 63518. The reclamation plan required to be submitted pursuant to this part as part of a permit application shall include details necessary to demonstrate that reclamation required by this part can be accomplished, and shall include all of the following:

(a) Identification of land subject to the surface coal mining operation over the estimated life of that operation and the size, sequence, and timing of any subareas for which it is anticipated that individual permits for surface coal mining will be sought.

(b) The condition of the land to be covered by the permit prior to any surface coal mining, including:

(i) The uses existing at the time of the application and, if the land has a history of previous mining, the uses that preceded any mining.

(ii) The capability of the land, prior to any surface coal mining, to support a variety of uses, giving consideration to soil and foundation characteristics, topography, and vegetative cover and, if applicable, a soil survey prepared pursuant to section 63516(1)(n).

(iii) The productivity of the land prior to mining, based on the average yield of food, fiber, forage, or wood products consistent with productivity of similar lands in this state under best management practices.

(c) The use proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of those uses to applicable land use policies and plans. However, if the use made of the land before mining is agricultural and the use proposed to be made of the land following reclamation is other than that agricultural use, the permit shall not be approved by the department without the approval of the legislative body of each local unit of government in which land to be reclaimed is located.

(d) A detailed description of how the proposed postmining land use is to be achieved and the necessary support activities that may be needed to achieve that use.

(e) The engineering techniques proposed to be used in mining and reclamation and a description of the major equipment to be used. A plan for the control of surface water drainage and of water accumulation; a plan, if appropriate, for backfilling, soil stabilization and compacting, grading, and appropriate revegetation; and a plan for soil reconstruction, replacement, and stabilization, pursuant to the performance standards in section 63527(2)(g) for food, forage, and forest land identified in that section, and an estimate of the cost per acre of the reclamation, including a statement as to how the permittee plans to comply with each of the requirements set out in that section.

(f) The actions to be taken to maximize the utilization and conservation of the solid fuel resource being recovered so that mining and any activities related to mining of the land in the future can be minimized.

(g) An estimated timetable for the accomplishment of each major step in the reclamation plan.

(h) The actions to be taken to make the surface mining and reclamation operations consistent with surface owner plans and applicable land use plans and programs of local units of government.

(i) The actions to be taken to comply with applicable air and water quality laws of this state or the United States, rules and regulations of this state or the United States, or local ordinances and with applicable health and safety standards.

(j) The action to be taken to develop the reclamation plan in a manner consistent with local physical, environmental, and climatological conditions.

(k) The results of test borings that the applicant has made at the proposed permit area or other equivalent information and data in a form satisfactory to the department, including the location of subsurface water, and an analysis of those chemical properties of the coal and overburden that can be expected to have an adverse effect on the environment.

(l) An itemized list of land, interests in land, or options on those interests held by the applicant or pending bids by the applicant on interests in land adjacent to the proposed permit area.

(m) A detailed description of the actions to be taken during the mining and reclamation process to assure the protection of all of the following:

(i) The quality of surface and groundwater systems, both on-site and off-site, from adverse effects of the mining and reclamation process and the rights of present users to that water.

(ii) The quantity of surface and groundwater systems, both on-site and off-site, from adverse effects of the mining and reclamation process or to provide alternative sources of water where the protection of quantity cannot be assured.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63519 Blasting plan; submission by permit applicant.

Sec. 63519. Each applicant for a surface coal mining and reclamation permit shall submit to the department as a part of its application a blasting plan that outlines the procedures and standards by which the operator will meet the requirements of section 63527(2)(o).

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63520 Filing copy of application with county and township clerks; exception; information obtained by department available to public with county clerk; confidentiality.

Sec. 63520. (1) An applicant for a surface coal mining and reclamation permit shall file a copy of the application with the county clerk of each county in which the mining is proposed to occur and with the township clerk of each township in which the mining is proposed to occur, except for that information in the application pertaining to the coal seam.

(2) Except when confidentiality is provided for in this part, a record, report, inspection materials, or other information obtained by the department shall be available to the public with the county clerk of each county in which the mining is proposed to occur. The department shall transmit a record, report, inspection material, or other information to each county clerk within 10 days after it is received by the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63521 Application fee.

Sec. 63521. An application for a surface coal mining and reclamation permit shall be accompanied by an initial application fee. The initial application fee is \$100.00.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63522 Determination of probable hydrologic consequences and statement of boring or sampling results; performance; cost.

Sec. 63522. If the department finds that the probable total annual production at all locations of a surface coal mining operator will not exceed 100,000 tons, the determination of probable hydrologic consequences and statement of the results of test borings or core samplings required by section 63516, on the written request of the operator, shall be performed by a qualified governmental agency or private consultant designated by the department, and the cost of the preparation of the determination and statement shall be assumed by the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63523 Application for permit or renewal; advertisement of ownership, location, and boundaries of land affected; notification of local units of government; written comments; notice to department of history, arts, and libraries; determination; filing objections to proposed application for permit; request for hearing; action by department.

Sec. 63523. (1) When an application for a surface coal mining and reclamation permit or renewal of an existing permit is submitted, the applicant's advertisement of ownership, location, and boundaries of the land to be affected shall be placed in a local newspaper of general circulation in the locality of the proposed surface coal mining operation for 4 consecutive weeks. The department shall notify local units of government in the vicinity of the proposed mining and reclamation area of the operator's intention to conduct a surface mining operation indicating the application's number and the county courthouse or township office in which a copy of the proposed surface coal mining and reclamation plan may be inspected. A local unit of government may submit written comments within a period established by the department on the mining applications with respect to the effect of the operation proposed by the applicant on the environment that is within its area of responsibility. The comments shall immediately be transmitted to the applicant by the department and shall be made available to the public at the same location as the mining application.

(2) In addition to the notice required in subsection (1), the department shall notify the department of

history, arts, and libraries of the operator's intention to conduct a surface mining operation and shall provide the department of history, arts, and libraries with a copy of the permit application. Based on the information required pursuant to section 63516(1)(r), the department of history, arts, and libraries shall determine whether or not the proposed surface mining operation will adversely affect a historic resource. The department of history, arts, and libraries may file written objection to the proposed surface mining operation pursuant to subsection (3).

(3) A person having an interest that is or may be adversely affected by the operation proposed in the application and any federal or state government agency or local unit of government is entitled to file written objections to the proposed initial or revised application for a permit for surface coal mining and reclamation operation with the department not later than 30 days after the last publication of the notice required by subsection (1). Those objections shall immediately be transmitted to the applicant by the department and shall be made available to the public.

(4) Within 45 days after the last publication of the notice provided in subsection (1), the applicant or any person with an interest that is or may be adversely affected may request a hearing on the application. The hearing shall be held within 30 days after the expiration of the time allowed for submitting the request.

(5) An action taken by the department with respect to a permit application shall be conducted pursuant to chapters 4 and 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.292.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 78, Eff. Aug. 6, 2001.

Compiler's note: For transfer of powers and duties of department of history, arts, and libraries or the Michigan historical center relating to the identification, certification, and preservation of historical sites to the Michigan state housing development authority, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

324.63524 Application for permit or revision of permit; notice; burden; requirements for approval; filing schedule listing notices of violations; issuance of permit; mining on agricultural land; consultation; finding.

Sec. 63524. (1) The applicant for a permit or revision of a permit has the burden of establishing that his or her application is in compliance with all the requirements of this part. Within 3 days after the granting of a permit, but before the permit is issued, the department shall notify the county clerk in each county in which the land to be affected is located that a permit has been issued and shall describe the location of the land.

(2) An application for a permit or revision of a permit shall not be approved unless the department finds, in writing, that all the following requirements have been met:

(a) The application is accurate and complete and complies with all of the requirements of this part.

(b) The applicant has demonstrated that reclamation as required by this part can be accomplished under the reclamation plan contained in the application.

(c) An assessment of the probable cumulative impact of all anticipated surface coal mining inside and outside the permit area on the hydrologic balance, including quantitative and qualitative analyses, has been made by the department, and the proposed operation has been designed to prevent material damage to the hydrologic balance inside and outside the permit area.

(d) The area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to this part and is not within an area under study for this designation in an administrative proceeding commenced pursuant to this part, unless in the area as to which an administrative proceeding has commenced, the applicant demonstrates that, prior to January 1, 1977, the applicant has made substantial legal and financial commitments in relation to the operation for which the applicant is applying for a permit.

(e) If the ownership of the coal has been severed from the private surface estate, the applicant has submitted to the department either the written consent of the surface owner to the extraction of coal by surface mining methods or a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods. However, if the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with state law, except that this part does not authorize the department to adjudicate property rights disputes.

(f) If the department of history, arts, and libraries determines that the proposed surface mining operation will adversely affect a historic resource, the application is approved jointly by the department, by the federal, state, or local agency with jurisdiction over the historic resource, and by the department of history, arts, and libraries.

(3) The applicant shall file, with the application, a schedule listing all notices of violations of this part or other law of this state and any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection

with a surface coal mining operation during the 3-year period prior to the date of application. The schedule shall include the final resolution of notice of the violation. If the schedule or other information available to the department indicates that a surface coal mining operation owned or controlled by the applicant is currently in violation of this part or other laws referred to in this subsection, the permit shall not be issued until the applicant submits affidavits that the violation has been corrected or is in the process of being corrected to the satisfaction of the department or the agency that has jurisdiction over the violation or that the notice of violation is being contested by the applicant. A permit shall not be issued to an applicant after a finding by the department, after opportunity for hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of violations of this part of such nature and duration with such resulting pollution, impairment, or destruction to the environment as to indicate an intent not to comply with this part.

(4) If the area proposed to be mined contains agricultural land, the department shall consult with the director of the department of agriculture and the secretary of the United States department of agriculture and shall not grant a permit to mine on agricultural land unless the department finds in writing that the operator has the technological capability to restore the mined area and any other areas impacted by the surface coal mining operation within a reasonable time to equivalent or higher levels of yield as nonmined agricultural land in the surrounding area under equivalent levels of management, and also finds that the applicant can meet the soil reconstruction standards of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 78, Eff. Aug. 6, 2001;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Compiler's note: For transfer of powers and duties of department of history, arts, and libraries or the Michigan historical center relating to the identification, certification, and preservation of historical sites to the Michigan state housing development authority, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

324.63525 Application for revision of permit; standards; transfer, assignment, or sale of rights; review of outstanding permits; revision or modification of permit provisions; conducting action regarding permit pursuant to MCL 24.271 to 24.292.

Sec. 63525. (1) During the term of a permit, the permittee may submit to the department an application for a revision of the permit, including a revised reclamation plan. An application for a revision of a permit shall not be approved unless the department finds that reclamation as required by this part can be accomplished under the revised reclamation plan. An application for a revision is subject to part 13, except that the department shall establish standards for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures shall apply.

(2) A transfer, assignment, or sale of the rights granted under a permit issued pursuant to this part shall not be made without the written approval of the department.

(3) The department shall, within a time limit prescribed by rule, review outstanding permits. The department may require revision or modification of the permit provisions during the terms of the permit based on a change in technology or a change in circumstances.

(4) All action taken by the department under this section regarding the granting, modification, denial, or revision of a permit shall be conducted pursuant to chapters 4 and 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.292.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Compiler's note: For transfer of powers and duties of department of history, arts, and libraries or the Michigan historical center relating to the identification, certification, and preservation of historical sites to the Michigan state housing development authority, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

324.63526 Construction of subpart.

Sec. 63526. This subpart does not exempt a permittee from obtaining any other permit, license, or permission to engage in any activity regulated by this part that is required by any other law of this state, any rule promulgated under a law of this state, or a zoning ordinance enacted by a local unit of government.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 4
ENVIRONMENTAL PERFORMANCE STANDARDS

324.63527 Performance standards.

Sec. 63527. (1) A permit issued under this part to conduct surface coal mining operations shall require that the operations meet the performance standards provided in subsection (2).

(2) Except as otherwise provided in this part, all surface coal mining and reclamation operations shall require the operator to do all of the following:

(a) Conduct surface coal mining operations in a manner that maximizes the utilization and conservation of the solid fuel resource being recovered to prevent re-affecting the land in the future through subsequent surface coal mining.

(b) Restore the land affected to a condition capable of supporting the uses that it was capable of supporting prior to any mining, or higher or better uses if priority is given to restoration of agricultural land to agricultural uses, if that use does not present an actual or probable hazard to public health or safety or pose an actual or probable threat of water diminution or pollution, and if the declared proposed land use in the permit application following reclamation is not inconsistent with applicable land use policies and plans, does not involve unreasonable delay in implementation, and is and is not in violation of a law of this state or the United States or a local ordinance.

(c) Backfill; compact, where advisable to ensure stability or to prevent leaching of toxic materials; and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated, unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this part. However, for surface coal mining that is carried out at the same location over a substantial period of time where the operation transects the coal deposit and the thickness of the coal deposits is large relative to the volume of the overburden and if the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region. In addition, in surface coal mining, where the volume of overburden is large relative to the thickness of the coal deposit and if the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade, and compact the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region. In all cases, the overburden or spoil shall be shaped and graded to prevent slides, erosion, and water pollution and shall be revegetated in accordance with a plan for revegetation developed in cooperation with each soil conservation district affected by the surface coal mining operation and the requirements of this part.

(d) Stabilize and protect all surface areas, including spoil piles, affected by the surface coal mining and reclamation operation and effectively control erosion and attendant air and water pollution.

(e) Remove the topsoil from the land in a separate layer and replace it on the backfill area. Except that, if the topsoil is not utilized immediately, the operator shall be required to segregate it in a separate pile from other spoil and, when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick-growing plant or other means so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic materials, and is in a usable condition for sustaining vegetation when restored during reclamation. However, if topsoil is of insufficient quantity or of poor quality for sustaining vegetation requirements imposed in this subpart and subpart 3, or if other strata can be shown to be more suitable for vegetation requirements imposed in this subpart and subpart 3, then the operator shall remove, segregate, and preserve in a like manner the other strata that are best able to support vegetation.

(f) Restore the topsoil or the available subsoil that is best able to support vegetation.

(g) If agricultural land is to be mined and reclaimed, the specifications for soil removal, storage, replacement, and reconstruction shall be established by the department of agriculture in consultation with the secretary of the United States department of agriculture, and the operator is, at a minimum, required to do all of the following:

(i) Segregate the A horizon of the natural soil, except where it can be shown that other available soil

materials will create a final soil having a greater productive capacity. If the A horizon of the natural soil is not utilized immediately, it shall be stockpiled separately from other spoil and provided protection from wind and water erosion or contamination by other acid or toxic material.

(ii) Segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of those horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil. If the B and C horizons of the natural soil are not utilized immediately, they shall be stockpiled separately from other spoil and provided protection from wind and water erosion or contamination by other acid or toxic material.

(iii) Replace and regrade the root zone material described in subparagraph (ii) with proper compaction and uniform depth over the regraded spoil material.

(iv) Redistribute and grade in a uniform manner the surface soil horizon described in subparagraph (i).

(h) Create, if authorized in the approved mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities but only when all of the following are adequately demonstrated:

(i) The size of the impoundment is adequate for its intended purposes.

(ii) The impoundment dam construction will be designed to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under the watershed protection and flood prevention act, chapter 656, 68 Stat. 666.

(iii) The quality of impounded water will be suitable on a permanent basis for its intended use, and discharges from the impoundment will not degrade the water quality in the receiving stream below water quality standards established pursuant to applicable federal and state law.

(iv) The level of water will be stable.

(v) Final grading will provide safety and access for proposed water users.

(vi) The water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(vii) The impoundment is consistent with the laws of this state or the United States; rules and regulations of this state or the United States; or local ordinance.

(i) Conduct an augering operation associated with surface mining in a manner to maximize recoverability of coal reserves remaining after the operation and reclamation are complete, and seal all auger holes with an impervious and noncombustible material in order to prevent drainage, except where the department determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health or safety. The department may prohibit augering under standards established by rule if necessary to maximize the utilization, recoverability, or conservation of solid fuel resources or to protect against adverse water quality impacts.

(j) Minimize disturbances to the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quality and quantity of water in surface and groundwater systems both during and after surface coal mining operations and during reclamation by:

(i) Avoiding acid or other toxic mine drainage by preventing or removing water from contact with toxic-producing deposits; treating drainage to reduce toxic content that adversely affects downstream water on being released to water courses; or casing, sealing, or otherwise managing bore holes, shafts, and wells and keeping acid or other toxic drainage from entering surface water and groundwater.

(ii) Conducting surface coal mining operations to prevent, to the extent possible using technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, except that contributions shall not be in excess of requirements set by applicable state or federal law.

(iii) Constructing any siltation structures pursuant to subparagraph (ii) prior to commencement of surface coal mining operations. A siltation structure shall be certified by a qualified registered engineer and shall be constructed as designed and approved in the reclamation plan.

(iv) Cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site in a manner approved by the department.

(v) Restoring recharge capacity of the mined area to approximate premining conditions.

(vi) Avoiding channel deepening or enlargement in operations requiring the discharge of water from mines.

(vii) Other actions as the department may prescribe.

(k) Stabilize all waste piles in designated areas with respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine working or excavation through construction in compacted layers including the use of incombustible and impervious materials, if necessary,

and assure that the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to this part.

(l) Refrain from surface coal mining within 500 feet of an active or abandoned underground mine to prevent breakthroughs and to protect the health and safety of miners and other persons. However, the department shall allow an operator to mine near, through, or partially through an abandoned underground mine or closer than 500 feet of an active underground mine if the nature, timing, and sequencing of specific surface mine activities with specific underground mine activities are jointly approved by the federal and state agencies and local units of government concerned with surface mine regulation and the health and safety of underground miners, and the operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(m) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to rules promulgated by the department, all existing and new coal mine waste piles, consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as a dam or embankment.

(n) Ensure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated, buried, compacted, or otherwise disposed of to prevent contamination of surface water or groundwater and that contingency plans are developed to prevent sustained combustion of those materials.

(o) Ensure that explosives are used only in accordance with existing state and federal law and the rules promulgated by the department. Rules promulgated by the department shall require the permittee to do all of the following:

(i) Publish the schedule of the planned blasting in a newspaper of general circulation in the vicinity, mailing a copy of the proposed blasting schedule to every resident living within 1/2 mile of the proposed blasting site, and providing daily notice in the vicinity prior to any blasting.

(ii) Maintain for a period of at least 3 years and make available for public inspection on request during normal business hours a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts.

(iii) Limit the type of explosives and detonating equipment and the size, timing, and frequency of blasts based upon the physical conditions of the site to prevent injury to persons, damage to public and private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface water outside the permit area.

(iv) Have all blasting operations conducted pursuant to this part conducted by trained and competent individuals certified by the department.

(v) Require the applicant or permittee to conduct a preblasting survey of a structure or dwelling upon the request of a resident or owner of a structure or dwelling within 1/2 mile of the permit area and to submit the survey to the department and a copy of the survey to the resident or owner making the request. The area covered by the survey shall be determined by the department and the survey shall include provisions and shall be conducted pursuant to standards established by rules promulgated by the department.

(p) Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations. However, if the applicant proposes to combine surface mining operations with underground mining operations to assure maximum practical recovery of the coal resources, the department may grant a variance for specific areas within the reclamation plan from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation if all the following conditions are met:

(i) The department finds in writing that:

(A) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations.

(B) The proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the coal resource and will avoid multiple disturbance of the surface.

(C) The plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and permits necessary for the underground mining operations have been issued by the appropriate authority.

(D) The areas proposed for the variance have been shown by the applicant to be necessary for implementing the proposed underground mining operations.

(E) Significant adverse environmental damage, either on site or off site, will not result from the delay in completion of reclamation as required by this part.

(F) Provisions for the off-site storage of spoil will comply with subdivision (v).

(ii) The department has promulgated specific rules to govern the granting of the variances in accordance with this subsection.

(iii) The variance granted will be reviewed annually by the department.

(iv) The liability under the bond filed by the applicant with the department pursuant to section 63529(2) is for the duration of the underground mining operations and until the requirements of sections 63527(2) and 63528 have been fully complied with.

(q) Ensure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion, siltation, pollution of water, and damage to fish or wildlife, the habitat of fish or wildlife, or public or private property.

(r) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to the channel as to significantly alter or degrade the normal flow of water.

(s) Establish on regraded areas and all other land affected, in cooperation with each soil conservation district affected by the surface coal mining operation, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in the extent of cover to the natural vegetation of the area. However, introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan.

(t) Assume the responsibility for successful revegetation as required by subdivision (s) for a period of 5 years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with subdivision (s). However, in those areas or regions of the state where the annual average precipitation is 26 inches or less, the operator's assumption of responsibility and liability will extend for a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work. If the department approves long-term intensive agricultural postmining land use, the applicable 5- or 10-year period of responsibility for revegetation commences at the date of initial planting for the long-term intensive agricultural postmining land use, except that if the department issues a written finding approving a long-term intensive agricultural postmining land use as part of the mining and reclamation plan, the department may grant exception to the provisions of subdivision (s).

(u) Protect off-site areas from slides or damage occurring during the surface coal mining and reclamation operations, and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area.

(v) Place all excess spoil material resulting from coal surface mining and reclamation activities in such a manner that:

(i) Spoil is transported and placed in a controlled manner in position for concurrent compaction and in such a way as to assure mass stability and to prevent mass movement.

(ii) The areas of disposal are within the bonded permit areas and all organic matter is removed immediately prior to spoil placement.

(iii) Appropriate surface and internal drainage systems and diversion ditches are used to prevent spoil erosion and movement.

(iv) The disposal area does not contain springs, natural watercourses, or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains to prevent filtration of the water into the spoil pile.

(v) If placed on a slope, the spoil is placed on the most moderate slope and is placed, where possible, on or above a natural terrace, bench, or berm, if the placement provides additional stability and prevents mass movement.

(vi) If the toe of the spoil rests on a downslope, a rock toe buttress of sufficient size to prevent mass movement is constructed.

(vii) The final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses.

(viii) Design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards.

(ix) All other provisions of this part are met.

(w) Meet other criteria necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site.

(x) To the extent possible, using the best technology currently available, minimize disturbance and adverse impacts of the operation on fish, wildlife, and related environmental values and, if practicable, achieve enhancement of those resources.

(y) Provide for an undisturbed natural barrier to be retained in place as a barrier to slides and erosion beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for the distance the department determines necessary.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 5 BONDING

324.63528 Certificate of public liability insurance; maintenance of policy in full force and effect; rules.

Sec. 63528. (1) An applicant for a permit shall submit to the department, as part of each permit application, a certificate that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation for which the permit is sought. The policy shall be maintained in full force and effect during the terms of the permit or any renewal, including all reclamation operations.

(2) The department shall promulgate rules establishing standards for adequate public liability insurance coverage consistent with section 63516(2).

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63529 Performance bond; form, coverage, and amount; liability; execution by applicant and corporate surety; election to deposit cash or assets as security; acceptance of bond without separate surety; adjustment of bond or deposit amount and terms of acceptance; rules.

Sec. 63529. (1) After a surface coal mining and reclamation permit application has been approved, but before the permit is issued, the applicant shall file with the department, on a form prescribed and furnished by the department, a bond for performance payable to the state and conditioned on faithful performance of all requirements of this part and the permit. The bond shall cover that area of land within the permit area on which the applicant will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. Before succeeding increments of surface coal mining and reclamation operations are initiated and conducted within the permit area, the permittee shall provide an additional bond or bonds to cover those increments. The amount of the bond required for each bonded area shall be determined by the department and shall reflect the reclamation requirements of the approved permit and the probable difficulty of the reclamation, giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the reclamation had to be performed by the department in the event of forfeiture, and the bond for the entire area under 1 permit shall not be less than \$10,000.00.

(2) Liability under the bond is for the duration of the surface coal mining and reclamation operation and for a period coincident with applicant's responsibility for revegetation. Except as provided in subsection (3), the bond shall be executed by the applicant and a corporate surety licensed to do business in this state.

(3) The applicant may elect to deposit cash or the following types of assets as security for the performance of the applicant's obligation under the bond:

(a) Obligations or securities of, or fully guaranteed as to principal and interest by, the United States or any of the agencies of the United States, or for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest.

(b) Obligations of a state of the United States, or an agency or authority of a state for which the full faith and credit of the state is pledged to provide payment of principal and interest.

(c) Obligations of this state or an agency or authority of this state for which specific revenues are pledged to provide payment of principal and interest.

(d) Negotiable certificates of deposit of a state or national bank.

(4) The cash deposit or market value of the assets shall be equal to or greater than the amount of the bond required for the bonded area.

(5) The department may accept the bond of the applicant without separate surety if the applicant demonstrates to the satisfaction of the department the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to bond the amount.

(6) The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the department from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

(7) The department shall promulgate rules establishing standards for adequate bond coverage consistent with this section.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63530 Total or partial release of performance bond or deposit; application; notice; publication; contents; inspection and evaluation of reclamation work; notification of decision; reclamation schedule; disapproval of application; notifying county clerk of filed application; written objections; public hearings; notice.

Sec. 63530. (1) The permittee may file a request with the department for the release of all or part of a performance bond or deposit. Within 30 days after submission of an application for bond or deposit release to the department, the permittee shall submit a copy of the notice to be published by the department for 4 consecutive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The notice is part of the bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, and the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's reclamation plan. In addition, as part of any bond release application, the applicant shall submit copies of letters that the applicant has sent to adjacent property owners and local units of government notifying them of the application to seek release from the bond.

(2) Within 30 days after the applicant complies with subsection (1), the department shall conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of the pollution, and the estimated cost of abating the pollution. The department shall notify the permittee, in writing, of its decision to release or not to release all or part of the performance bond or deposit based on the criteria in subsection (3) within 60 days from the filing of the request, if a public hearing is not held, and, if a public hearing is held, within 30 days after the hearing.

(3) The department may release the bond or deposit in whole or in part if the reclamation covered by the bond or deposit or portion of the reclamation has been accomplished as required by this part according to the following schedule:

(a) If the permittee completes the backfilling, regrading, and drainage control of a bonded area in accordance with the reclamation plan, the release of 60% of the bond or collateral for the applicable permit area.

(b) If revegetation has been established on the regraded mined lands in accordance with the reclamation plan, the department may release an additional portion of the bond or deposit. In determining the amount of the bond or deposit to be released after successful revegetation has been established, the department shall retain the amount of the bond or deposit that is sufficient for a third party to establish revegetation and for the period specified for permittee responsibility in section 63527(2)(t). No part of the bond or deposit shall be released under this subdivision if the land to which the release would be applicable is contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of section 63527(2)(j) or until soil productivity for agricultural land has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section 63516(1)(n). If a silt dam is to be retained as a permanent impoundment pursuant to section 63527(2)(h), the portion of bond may be released under this subdivision if provisions for sound future maintenance have been made with the department.

(c) If the permittee has successfully completed all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for permittee responsibility in section 63527(2)(t). However, at least 25% of the bond or deposit shall be retained by the department until all reclamation requirements of this part are fully met.

(4) If the department disapproves the application for release of the bond or deposit or a portion of the bond or deposit, it shall notify the permittee, in writing, stating the reasons for disapproval, recommending corrective actions necessary to secure the release, and allowing opportunity for a public hearing.

(5) When an application for total or partial bond or deposit release is filed with the department, the department shall notify the county clerk of each county in which the surface coal mining operation is located by certified mail within 10 days after the application for the release of all or a portion of the bond or deposit is

filed.

(6) A person with a legal interest or other interest that might be adversely affected by release of the bond or deposit or a federal or state agency or local unit of government is entitled to file written objections to the proposed release from bond or deposit with the department within 30 days after the last publication of the notice provided in subsection (1). If written objections are filed, the department shall conduct a public hearing on the objections and inform all the interested parties of the time and place of the hearing and hold the hearing in the locality of the surface coal mining operation within 30 days. Notice of the date, time, and location of the public hearings shall be published by the department in a newspaper of general circulation in the locality for 2 consecutive weeks.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63531 Coal exploration operations; rules; notice of intent to explore; violation of section or rules; penalties; maximum amount of coal removable pursuant to exploration permit.

Sec. 63531. (1) Coal exploration operations that significantly disturb the natural land surface shall be conducted in accordance with rules promulgated by the department. The rules shall include, at a minimum, the requirement that prior to conducting the exploration a person must file with the department notice of intent to explore. The notice of the intent to explore shall include a description of the exploration area; the period of proposed exploration; provisions for reclamation in accordance with the performance standards in section 63527 of all lands disturbed in exploration, including excavations, roads, and drill holes; and the removal of necessary facilities and equipment.

(2) A person who conducts any coal exploration operations that substantially disturb the natural land surface in violation of this section or the rules promulgated under this section is subject to the penalties provided in section 63537.

(3) An operator shall not remove more than 250 tons of coal pursuant to an exploration permit without the specific written approval of the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 6 UNDERGROUND MINING

324.63532 Surface effects of underground mining; rules.

Sec. 63532. The department shall promulgate rules applicable to the surface effects of underground mining that are consistent with the requirements of the surface mining control and reclamation act of 1977, and regulations adopted pursuant to that act by the secretary of interior of the United States relative to coal mining.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63533 Permit requirements; suspension of underground coal mining; imminent danger; applicability of subparts 3, 4, 5, 7, and 8 to surface operations and surface impacts incident to underground coal mine; modifications; rules.

Sec. 63533. (1) A permit issued pursuant to this part relating to underground coal mining shall require the operator to do all of the following:

(a) Adopt measures consistent with technology currently available to prevent subsidence causing material damage to the extent technologically and economically feasible; maximize mine stability; and maintain the value and reasonably foreseeable use of such surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner. This subsection does not prohibit the standard method of room and pillar mining.

(b) Seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine working when no longer needed for the conduct of the mining operations.

(c) Fill or seal exploratory holes no longer necessary for mining, maximizing to the extent technologically and economically feasible return of mine and processing waste, tailings, and any other waste incident to the mining operation, to the mine workings or excavations.

(d) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations, stabilize all waste piles created by the permittee from current operations through construction in compacted layers, including the use of incombustible and impervious materials if necessary; assure that the leachate will not degrade surface or groundwaters below water quality standards established pursuant to applicable federal and state law; and assure that the final contour of the waste accumulation will be compatible with natural surroundings and that the site is stabilized and revegetated according to this section.

(e) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes and used either temporarily or permanently as dams or embankments.

(f) Establish, on regraded areas and all other lands affected, a diverse and permanent vegetative cover that is capable of self-regeneration and plant succession and that is at least equal in extent of cover to the natural vegetation of the area.

(g) Protect off-site areas from damages that may result from underground mining operations.

(h) Eliminate fire hazards and eliminate conditions that constitute a hazard to health and safety of the public.

(i) Minimize the disturbances of the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quantity of water in surface groundwater systems both during and after coal mining operations and during reclamation by meeting both of the following requirements:

(i) Avoiding acid or other toxic mine drainage by such measures as the following:

(A) Preventing or removing water from contact with toxic producing deposits.

(B) Treating drainage to reduce toxic content that adversely affects downstream water upon being released to watercourses.

(C) Casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering surface and groundwaters.

(ii) Conducting surface coal mining operations so as to prevent, to the extent possible using technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event shall such contributions be in excess of requirements set by applicable state or federal law; and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines.

(j) With respect to other surface impacts not specified in this subsection, including the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under section 63527 for those effects that result from surface coal mining operations, except that the department shall make modifications in the requirements imposed by this subdivision as are necessary to accommodate the distinct difference between surface and underground coal mining.

(k) To the extent possible using technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable.

(l) Locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

(2) To protect the stability of the land, the department shall suspend underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if the department finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities.

(3) Subparts 3, 4, 5, 7, and 8 are applicable to surface operations and surface impacts incident to an underground coal mine with such modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining. The department shall promulgate rules to make those modifications.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 7 INSPECTIONS AND MONITORING

324.63534 Conducting inspections and requiring monitoring and reporting of surface coal mining and reclamation operations; taking necessary actions to administer part and meet program requirements; right of entry and access to records; notice and report of violation; removal or disturbance of strata serving as aquifer; specifications; rules; inspection requirements.

Sec. 63534. (1) The department shall conduct inspections and require monitoring and reporting of surface coal mining and reclamation operations, and shall take all actions necessary to administer, enforce, and evaluate the administration of this part and to meet the state program requirements of the surface mining control and reclamation act of 1977, and for those purposes, the department or an authorized representative of the department, without advance notice and on presentation of appropriate credentials, has a right of entry to any surface coal mining and reclamation operation or any premises in which any records required to be maintained are located, and may at reasonable times, without delay, have access to and copy any records and inspect any monitoring equipment and method of operation required under this part or the rules promulgated under this part.

(2) Each inspector, on detection of each alleged violation of any requirement of this part, shall give written notice to the operator of the violation and shall report the violation, in writing, to the department. The notice of violation shall include a warning that the violation may result in a fine or penalty under subpart 8.

(3) If a surface coal mining and reclamation operation removes or disturbs strata that serve as an aquifer that significantly ensures the hydrologic balance of water use either on or off the mining site, the department shall specify:

(a) Monitoring sites to record the quantity and quality of surface drainage above and below the mine site as well as in the potential zone of influence.

(b) Monitoring sites to record level, amount, and samples of groundwater and aquifers that are affected or potentially affected by the mining and also directly below the lowermost, deepest coal seam to be mined.

(c) Records of well logs and boreholes data to be maintained.

(d) Monitoring sites to record precipitation.

(4) The department shall promulgate rules that provide for informing the operator of an alleged violation detected by an inspector and for making public all inspection and monitoring reports and other records and reports required to be kept pursuant to this part and the rules promulgated under this part.

(5) Inspections by the department shall comply with all of the following requirements:

(a) Occur on an irregular basis averaging not less than 1 partial inspection per month and 1 complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by each permit.

(b) Occur without prior notice to the permittee or agents or employees of the permittee except for necessary on-site meetings with the permittee.

(c) Include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63535 Sign.

Sec. 63535. Each permittee shall conspicuously maintain at the entrances or visible areas of access to the surface coal mining and reclamation operations a clearly visible sign that sets forth the name, business address, and phone number of the permittee and the permit number of the surface coal mining and reclamation operations.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63536 Information obtained under article available to public with county clerk.

Sec. 63536. Copies of any records, reports, inspection materials, or information obtained under this subpart by the department shall be made available to the public with the county clerk of each county in the area of mining within 10 days after they are received by the department so that they are conveniently available to residents in the areas of mining.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

SUBPART 8
FINES AND PENALTIES

324.63537 Fines and imprisonment.

Sec. 63537. (1) The department may impose an administrative fine against a permittee or other person who violates a permit condition or a provision of this part. If the department issues a cease and desist order with respect to a violation, an administrative fine shall be assessed. An administrative fine shall not exceed \$5,000.00 for each violation, except that each day a violation continues may be considered a separate violation. In determining the amount of the administrative fine, the department shall consider the permittee's history of previous violations at the particular surface coal mining operation; the seriousness of the violation, including any pollution, impairment, or destruction to the environment and any hazard to the health or safety of the public; whether the permittee or person was indifferent or lacked diligence or reasonable care; and the demonstrated good faith of the permittee or person charged in attempting to achieve compliance after notification of the violation.

(2) An administrative fine shall be assessed only after the person charged with a violation described under subsection (1) has been given an opportunity for a public hearing. A hearing conducted under this section shall be conducted pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(3) The department shall inform the permittee and any other person charged within 30 days after the issuance of a notice or order charging that a violation of this part has occurred of the proposed amount of the administrative fine. The person charged with the violation then has 30 days to pay the proposed fine in full or, if the person wishes to contest either the amount of the fine or the fact of the violation, forward the proposed amount to the department for placement in an escrow account. If, through administrative or judicial review of the proposed fine, it is determined that a violation did not occur or that the amount of the fine should be reduced, the department, within 30 days, shall remit the appropriate amount to the person with interest at 12% per year. Failure to forward the money to the department within 30 days after the issuance of the notice or order will result in a waiver of all legal rights to contest the violation or the amount of the fine.

(4) An administrative fine imposed under this part may be recovered in a civil action brought by the attorney general at the request of the department.

(5) A person who willfully and knowingly violates a condition of a permit issued pursuant to this part or fails or refuses to comply with an order issued under this part, or an order incorporated in a final decision issued by the department under this part, except an order incorporated in a decision issued under subsection (2) or section 63541, shall be punished by imprisonment for not more than 1 year, or a fine of not more than \$10,000.00, or both.

(6) A permittee or person who fails to correct a violation for which a notice or order has been issued under subsection (1) within the period permitted for its correction, which period shall not end until the entry of a final order by the department, in the case of any review proceedings initiated by the permittee in which the department orders the suspension of the abatement requirements of the notice or order after determining that the permittee will suffer irreparable loss or damage from the application of those requirements, or until the entry of an order of the court, in the case of any review proceedings initiated by the permittee in which the court orders the suspension of an abatement requirement of the citation, shall be assessed a civil fine of not less than \$750.00 for each day during which the failure or violation continues.

(7) If a corporate permittee or person violates a condition of a permit issued pursuant to a state program under section 63524 or fails or refuses to comply with any order issued under section 63539, or any order incorporated in a final decision issued by the department under this part, except an order incorporated in a decision issued under subsection (2), then a director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal is subject to the same fines and imprisonment that may be imposed on a person under subsections (1) and (5).

(8) A person who knowingly makes a false statement, representation, or certification, or who knowingly fails to make a statement, representation, or certification in an application, record, report, or other document filed or required to be maintained pursuant to a state program or this part or any order of decision issued by the department under this part, shall be punished by imprisonment for not more than 1 year, or a fine of not more than \$10,000.00, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63538 Commencement of civil action; notice of intent to commence civil action; rule; notice of violation; effect of action by state; intervention by department or federal regulatory agency; costs of litigation; filing of security if temporary restraining order or preliminary injunction sought; construction of section.

Sec. 63538. (1) Except as provided in subsections (2) and (3), a person having an interest that is or may be adversely affected by an operation not in compliance with a permit or this part may commence a civil action in circuit court or federal district court, whichever has jurisdiction, on his or her own behalf to compel compliance against any of the following:

(a) The department or other state agency if there is alleged a failure of the department or other state agency to perform any act or duty under this part that is not discretionary with the department or other state regulatory authority.

(b) Any governmental instrumentality or agency of the United States that is alleged to be in violation of this part or of any rule, order, or permit issued pursuant to this part or any other person who is alleged to be in violation of any rule, order, or permit issued pursuant to this part.

(2) An action shall not be commenced under subsection (1)(a) until 20 days after the person intending to bring the action has given notice in writing of the intent to commence a civil action to the department or other state regulatory authority in the manner as the department shall by rule prescribe, except that the action may be brought immediately after the notification if the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(3) An action shall not be commenced under subsection (1)(b) until 20 days after the person intending to bring the action has given notice in writing of the violation to the department and to any alleged violator. However, if this state has commenced and is diligently prosecuting a civil action in a court of this state or the United States to require compliance with the provisions of this part, or any rule, order, or permit issued pursuant to this part, an action shall not be commenced pursuant to subsection (1)(b). In a civil action brought under this section, the department or federal regulatory agency, if not a party, may intervene as a matter of right.

(4) The circuit court, in an action brought pursuant to this section, may award costs of litigation, including attorney and expert witness fees to a party. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security.

(5) This section shall not be construed to restrict any right that a person or class of persons has under any statute or common law to seek enforcement of this part and the rules promulgated under this part, or to seek any other relief, including relief against the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63539 Notices and orders; application for review; investigation; public hearing; findings of fact; written decision; temporary relief from notice or order; conditions; requirements; suspension or revocation of permit; order to show cause; costs and expenses; civil action instituted by attorney general; certified mail.

Sec. 63539. (1) If the department determines, on the basis of an inspection, that a condition exists or practices exist or that a person or permittee is in violation of a requirement of this part or a permit condition required by this part and that this condition, practice, or violation also creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause pollution, impairment, or destruction to land, air, or water resources, the department shall immediately order a cessation of surface coal mining operations or the portion of surface coal mining operations relevant to the condition, practice, or violation. The cessation order shall remain in effect until the department determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the department pursuant to subsection (8). If the department finds that the ordered cessation of surface coal mining and reclamation operations, or any portion of those operations, will not completely abate the imminent danger to health or safety of the public or the pollution, impairment, or destruction to land, air, or water resources, the department shall, in addition to the cessation order, impose affirmative obligations on the operator requiring the operator to take those actions the department considers necessary to abate the imminent danger or the pollution, impairment, or destruction.

(2) If the department determines, on the basis of an inspection, that a permittee is in violation of a requirement of this part or a permit condition required by this part, but the violation does not create an

imminent danger to the health or safety of the public or is not causing or reasonably expected to cause pollution, impairment, or destruction to land, air, or water resources, the department shall issue a notice to the permittee setting a reasonable time not to exceed 90 days for the abatement of the violation. If, on expiration of the period of time as originally set or subsequently extended for good cause shown, and on written finding of the department, the department finds that the violation has not been abated, it shall immediately order a cessation of surface coal mining operations or the portion of surface coal mining operations relevant to the violation. The cessation order shall remain in effect until the department determines that the violation has been abated or until modified, vacated, or terminated by the department under subsection (9). In the order of cessation issued by the department under this subsection, the department shall specify the steps necessary to abate the violation in the most expeditious manner possible, and shall include the necessary measures in the order.

(3) A permittee issued notice or order by the department pursuant to subsections (1) and (2), or any person having an interest that is or may be adversely affected by the notice or order or by any modification, vacation, or termination of the notice or order, may apply to the department for review of the notice or order within 30 days of issuance of the notice or order or within 30 days of its modification, vacation, or termination. On receipt of the application, the department shall conduct an investigation. The investigation shall provide an opportunity for a public hearing, at the request of the applicant or the person having an interest that is or may be adversely affected, to enable the applicant or the person to present information relating to the issuance and continuance of the notice or order or the modification, vacation, or termination of the notice or order. The filing of an application for review under this subsection shall not operate as a stay of any order or notice. A hearing conducted under this subsection shall be conducted pursuant to chapter 4 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.

(4) On receiving the report of the investigation, the department shall make findings of fact and shall issue a written decision incorporating in the decision an order vacating, affirming, modifying, or terminating the notice or order or the modification, vacation, or termination of the notice or order complained of and incorporate its findings therein. If the application for review concerns an order for cessation of surface coal mining and reclamation operations issued pursuant to subsection (1) or (2), the department shall issue the written decision within 30 days of the receipt of the application for review unless temporary relief has been granted by the department under subsection (5).

(5) Pending completion of the investigation and hearing required by this section, the applicant may file with the department a written request that the department grant temporary relief from any notice or order issued under this section, together with a detailed statement giving reasons for granting the relief. The department shall issue an order or decision granting or denying the relief, except that if the applicant requests relief from an order for cessation of coal mining and reclamation operations issued under subsection (3) or (4), the order or decision on the request shall be issued within 5 days of its receipt. The department may grant the relief, under conditions it may prescribe, if all of the following requirements are met:

(a) A hearing has been held in the locality of the permit area on the request for temporary relief in which interested parties were given an opportunity to be heard.

(b) The applicant shows that there is a substantial likelihood that the findings of the department will be favorable to the applicant.

(c) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(6) Following the issuance of an order to show cause as to why a permit should not be suspended or revoked under this section, the department shall hold a public hearing after giving written notice of the time, place, and date of the hearing. The hearing shall be conducted pursuant to chapters 4 and 5 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.292 of the Michigan Compiled Laws. If the department revokes the permit, the permittee shall immediately cease surface coal mining operations on the permit area and shall complete reclamation within a period specified by the department, or the department shall declare as forfeited the performance bonds for the operation.

(7) If an order is issued under this section, or as a result of any administrative proceeding under this part, at the request of any person, a sum equal to the aggregate amount of all costs and expenses, including attorney fees, as determined by the department to have been reasonably incurred by the person for or in connection with his or her participation in the proceedings, may be assessed against either party as the department considers proper, or as the court, for costs and attorneys' fees resulting from judicial review, considers proper.

(8) If the department has reason to believe, on the basis of an inspection, that a pattern of violations of any requirements of this part or any permit conditions required by this part exists or has existed, and if the

department or its authorized representative also finds that these violations are caused by the unwarranted failure of the permittee to comply with requirements of this part or any permit conditions, or that the violations are willfully caused by the permittee, the department shall issue an order to the permittee to show cause as to why the permit should not be suspended or revoked. The order shall set a time and place for a public hearing, to be conducted pursuant to chapters 4 and 5 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, and the department shall inform all interested parties of the hearing. If the permittee fails to show cause why the permit should not be suspended or revoked, the department shall promptly suspend or revoke the permit.

(9) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or an agent of the permittee by the department. A notice or order issued pursuant to this section may be modified, vacated, or terminated by the department. A notice or order issued pursuant to this section that requires cessation of mining by the operator shall expire within 30 days of actual notice to the operator unless a public hearing is held at the site or within a reasonable proximity to the site so that any viewings of the site can be conducted during the course of the public hearing.

(10) The department may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or other appropriate order, if the permittee does any of the following:

(a) Violates or fails or refuses to comply with an order or decision issued by the department under this part.

(b) Interferes with, hinders, or delays the department or its authorized representative in carrying out the provisions of this section.

(c) Refuses to admit to the mine an authorized representative of the department, if the authorized representative presented the documents required by this part for proper entry.

(d) Refuses to permit inspection of the mine by an authorized representative of the department, if the authorized representative presented the documents required by this part for proper entry.

(e) Refuses to furnish information or a report requested by the department under the department's rules.

(f) Refuses to permit access to and copying of records the department determines reasonably necessary to carry out this part.

(11) All notices or orders required by this subpart shall be sent by certified mail, return receipt requested.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63540 Financial interest of department employee in coal mining operation prohibited; violation; penalty.

Sec. 63540. An employee of the department performing any function or duty under this part shall not have a direct or indirect financial interest in an underground or surface coal mining operation. A person who knowingly violates this subsection shall, on conviction, be punished by imprisonment for not more than 1 year, or a fine of not more than \$2,500.00, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63541 Prohibited acts; violation; penalty.

Sec. 63541. Except as permitted by a law of this state or the United States, a person shall not willfully resist, prevent, impede, or interfere with the department or any of its agents in the performance of duties pursuant to this part. A person who violates this section shall be punished by imprisonment for not more than 1 year, or a fine of not more than \$5,000.00, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 9

INSPECTION AND RECLAMATION FEE

324.63542 Inspection and reclamation fee; amount; rule; quarterly reports; contents; notice

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of fee due; payment and disposition of fees.

Sec. 63542. (1) For the purposes of inspections and monitoring, and the administration and enforcement of this part, an operator is assessed an inspection and reclamation fee of not more than 25 cents per ton of coal mined, as determined by the department. The department shall establish, by rule, criteria for determining the amount of the inspection and reclamation fee. In making the determination of the amount of the inspection and reclamation fee, the department shall take into account funds made available to the department pursuant to the surface mining control and reclamation act of 1977, and funds from any other source for the purposes specified in this subsection. The total inspection and reclamation fees assessed annually shall not exceed the total amount appropriated to the department for the purposes specified in this subsection.

(2) An operator shall file quarterly reports with the department on a calendar year basis. The report shall include all of the following:

(a) The location of the mining operation and the areas mined during the quarter.

(b) A description of the progress of restoration and reclamation activities of the operator for the preceding quarter.

(c) The number of tons of coal mined during the quarter.

(3) Based on the information reported pursuant to subsection (2)(c), the department shall send the operator written notice of the amount of the fee due for the quarter. The operator shall pay the fee to the department within 30 days after receipt of the notice.

(4) The department shall deposit the inspection and reclamation fee in the state abandoned mine reclamation fund created by section 63510.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63543 Failure to submit quarterly report as grounds for revocation of permit; penalty; unpaid fee and penalty as debt; confidentiality of fee and reports; disclosure.

Sec. 63543. (1) Failure to submit a quarterly report constitutes grounds for revocation of a permit. An action taken by the department under this subsection shall be conducted pursuant to chapters 4 and 5 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.292 of the Michigan Compiled Laws.

(2) A penalty equal to 12% of the amount due, or \$1,000.00, whichever is greater, shall be assessed against the operator for a fee not properly or promptly paid pursuant to section 63542. An unpaid fee and penalty shall constitute a debt and become the basis of a civil action against the operator to compel the payment of the debt.

(3) The inspection and reclamation fee and quarterly reports required by this subpart shall be confidential and shall not be subject to the disclosure requirements of 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, except that disclosure may be made with the written consent of the operator filing the fee and report or pursuant to a court order.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63544 Prohibited acts; penalty.

Sec. 63544. Any person, corporate officer, agent, or director, on behalf of an operator, who knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification regarding a report required in this subpart, shall be punished by imprisonment for not more than 1 year, or a fine of not more than \$10,000.00, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 10
MISCELLANEOUS PROVISIONS

324.63545 Designating areas unsuitable for surface coal mining; rules; determination; petition by interested person; public hearing; written decision; statement; certain surface coal mining operation prohibited; consultation.

Sec. 63545. (1) The department shall promulgate rules establishing a process for designating areas

unsuitable for surface coal mining. The rules shall include all of the following:

- (a) Surface coal mining land review.
- (b) Development of a data base and an inventory system that will permit proper evaluation of the capacity of different land areas of the state to support and permit reclamation of surface coal mining operations.
- (c) Development, by rule, of a method for implementing land use planning decisions concerning surface coal mining operations.
- (d) Development, by rule, of proper notice provisions and opportunity for public participation, including a public hearing, prior to making any designation or redesignation pursuant to this section.
- (e) Procedures for determining whether an area proposed for surface coal mining contains historic resources. These rules shall be developed with the concurrence of the department of history, arts, and libraries and the department of natural resources.

(2) On a petition submitted pursuant to subsection (3), the department shall designate an area as unsuitable for all or certain types of surface coal mining operations if the department determines that reclamation pursuant to the requirements of this part is not technologically and economically feasible. A surface area may be designated unsuitable for certain types of surface coal mining operations if those operations do any of the following:

- (a) Are incompatible with existing state or local land use plans or programs.
- (b) Affect fragile land or historic resources resulting in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems.
- (c) Affect renewable resource land, including aquifers and aquifer recharge areas, resulting in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products.
- (d) Affect natural hazard land, including areas subject to frequent flooding and areas of unstable geology, substantially endangering life and property.
- (e) Affect agricultural land by diminishing the productivity of the land after reclamation to less than the productivity before the site was mined.
- (f) Adversely affect an agricultural operation, including planting, harvesting, transportation, processing, or other activity included in the agricultural impact statement required by section 63516(1)(s).

(3) Determinations of the unsuitability of land for surface coal mining shall be integrated with present and future land use planning and regulation processes at the federal, state, and local levels. The requirements of this section do not apply to land on which surface coal mining operations were being conducted on August 3, 1977, or under a permit issued pursuant to former 1982 PA 303, or where substantial legal and financial commitments in the operation or proposed operation were in existence prior to January 4, 1977.

(4) A person having an interest that is or may be adversely affected has the right to petition the department to have an area designated as unsuitable for surface coal mining operations or to have that designation terminated. The petition shall contain allegations of facts with supporting evidence. Within 30 days after receipt of the petition, the department shall hold a public hearing in the locality of the affected area. After a person having an interest that is or may be adversely affected has filed a petition and before the hearing, any person may intervene by filing allegations of facts with supporting evidence that would tend to establish the allegations. Within 60 days after the hearing, the department shall issue and furnish to the petitioner and any other party to the hearing a written decision with reasons for the decision. In the event that all the parties stipulate agreement prior to the requested hearing and withdraw their request, the hearing need not be held.

(5) Before designating land areas as unsuitable for surface coal mining operations, the department shall prepare a detailed statement on the potential coal resources of the area, the demand for coal resources, and the impact of the designation on the environment, the economy, and the supply of coal.

(6) After October 12, 1982, and subject to valid existing rights, surface coal mining operations, except those that existed on August 3, 1977, shall not be permitted that do any of the following:

- (a) Adversely affect a publicly owned park or historic resource unless approved jointly by the department and the federal, state, or local agency with jurisdiction over the park or historic resource and by the department of history, arts, and libraries.
- (b) Are within 100 feet of the outside right-of-way line of a public road, except where mine access roads or haulage roads join the right-of-way lines and except that the department may permit these roads to be relocated or the area affected to lie within 100 feet of the public road, if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected by the relocation will be protected.
- (c) Are within 300 feet of an occupied dwelling, unless waived by the owner of the dwelling, or within 300 feet of any public building, school, church, community, or institutional building, or public park, or within 300 feet of a cemetery.

(7) The department shall designate areas protected by part 351 as unsuitable for surface coal mining.

(8) In administering this section, the department shall consult with the department of natural resources.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 78, Eff. Aug. 6, 2001.

Popular name: Act 451

Popular name: NREPA

324.63546 Government agency, unit, or instrumentality proposed to engage in surface coal mining operations; compliance with part.

Sec. 63546. An agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government, that proposes to engage in surface coal mining operations that are subject to the requirements of this part shall comply with all provisions of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63547 Part inapplicable to certain activities.

Sec. 63547. This part does not apply to any of the following:

(a) The extraction of coal as an incidental part of federal, state, or local government financed highway or other construction under rules established by the department.

(b) The extraction of coal incidental to the extraction of other minerals if the amount of coal does not exceed 50 tons or 16-2/3% of the total tonnage of other minerals removed annually for purposes of commercial use or sale, whichever is less.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63548 Departures from environmental protection performance standards; authorization.

Sec. 63548. To encourage advances in mining and reclamation practices and to allow postmining land use for industrial, commercial, residential, or public use, including recreational facilities, the department may, with approval by the secretary of the United States department of the interior, authorize departures in individual cases and on an experimental basis from the environmental protection performance standards of this part. These departures may be authorized if the experimental practices are potentially at least as environmentally protective, during and after mining operations, as those required by this part; if the mining operations approved for particular land use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and if the experimental practices do not reduce the protection afforded public health and safety below that provided by this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63549 Right to enforce or protect interest in natural resource affected by operation; replacement of water supply.

Sec. 63549. (1) This part shall not be construed as affecting the right of any person to enforce or protect, under applicable law, his or her interest in water or any other natural resource affected by a surface coal mining operation.

(2) The operator of a surface coal mining operation shall replace the water supply of an owner of an interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution, or interruption proximately resulting from the surface coal mine operation.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 637 SAND DUNE MINING

324.63701 Definitions.

Sec. 63701. As used in this part:

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(a) “Active cell-unit” means a cell-unit set forth in the approved progressive cell-unit mining and reclamation plan provided for in section 63706(1), in which vegetation and topsoil have been removed in preparation for sand dune mining or sand removal has been initiated after the date of issuance of the sand dune mining permit. Vegetation removal does not preclude the removal of marketable forest products from a cell-unit, if the removal maintains the ground cover and topsoil within the cell-unit in stable condition.

(b) “Administratively complete” means an application for a sand dune mining permit that is determined by the department to satisfy all of the conditions of this part and rules promulgated under this part.

(c) “Barrier dune” means the first landward sand dune formation along the shoreline of a Great Lake or a sand dune formation designated by the department.

(d) “Beneficiation” means to process sand for any of the following purposes, but does not include the drying process:

(i) Regulating the grain size of the desired product.

(ii) Removing unwanted constituents.

(iii) Improving the quality and purity of the desired product.

(e) “Cell-unit” means a subunit of the total sand dune mining project as determined in size and location by the operator. A cell-unit shall not exceed 10 acres in size for sand dune mining operations that commence operation after March 31, 1977 or for the expansion of sand dune mining operations that existed before March 31, 1977. A cell-unit shall not exceed 30 acres in size for operations that existed before March 31, 1977.

(f) “Conformance bond” means a surety bond that is executed by a surety company authorized to do business in this state, cash, certificates of deposit, letters of credit, or other securities that are filed by an operator to ensure compliance with this part, rules promulgated under this part, or conditions of a sand dune mining permit.

(g) “Environmental elements” means the biological, physical, and chemical characteristics of the environment, including but not limited to the following:

(i) Watersheds.

(ii) Water bodies.

(iii) Forests.

(iv) Existing areas maintained for public recreation.

(v) Shorelands.

(vi) Habitat areas.

(h) “Great Lakes” means any of the Great Lakes that have a shoreline within this state.

(i) “Interim cell-unit status” means a cell-unit as set forth in an approved progressive cell-unit mining and reclamation plan provided for in section 63706(1), in which all sand dune mining and reclamation within the cell-unit has been completed, but the vegetation has not sustained itself through 1 full growing season. A cell-unit placed in interim cell-unit status is required to retain the conformance bond provided in section 63712 until reclassification by the department as provided in section 63712(5). Each sand dune mining activity shall be limited to no more than 3 cell-units in interim cell-unit status at any 1 time.

(j) “Operator” means an owner or lessee of mineral rights or any other person engaged in or preparing to engage in sand dune mining activities with respect to mineral rights within a sand dune area.

(k) “Sand dune area” means that area designated by the department that includes those geomorphic features composed primarily of sand, whether windblown or of other origin and that lies within 2 miles of the ordinary high-water mark on a Great Lake as defined in section 32502, and includes critical dune areas as defined in part 353.

(l) “Sand dune mining” means the removal of sand from sand dune areas for commercial or industrial purposes, or both. The removal of sand from sand dune areas in volumes of less than 3,000 tons is not sand dune mining if the removal is a 1-time occurrence and the reason the sand is removed is not for the direct use for an industrial or commercial purpose. However, the removal of any volume of sand that is not sand dune mining within a critical dune area as defined in part 353 is subject to the critical dune protection provisions of part 353. The department may authorize in writing the removal of more than 3,000 tons of sand without a sand dune mining permit issued pursuant to section 63704 for a purpose related to protecting an occupied dwelling or other structure from property damage related to the migration of sand or the instability of sand. This removal may be for more than 1 occurrence, but a written authorization from the department is required for each removal.

(m) “Water table” means the surface in an unconfined aquifer at which the pressure is atmospheric. The water table is found at the level at which water stands in wells that penetrate the aquifer.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63702 Sand dune mining permit within critical dune area; “adjacent” defined.

Sec. 63702. (1) Notwithstanding any other provision of this part, the department shall not issue a sand dune mining permit within a critical dune area as defined in part 353 after July 5, 1989, except under either of the following circumstances:

(a) The operator seeks to renew or amend a sand dune mining permit that was issued prior to July 5, 1989, subject to the criteria and standards applicable to a renewal or amendatory application.

(b) The operator holds a sand dune mining permit issued pursuant to section 63704 and is seeking to amend the mining permit to include land that is adjacent to property the operator is permitted to mine, and prior to July 5, 1989 the operator owned the land or owned rights to mine dune sand in the land for which the operator seeks an amended permit.

(2) As used in this section, “adjacent” means land that is contiguous with the land for which the operator holds a sand dune mining permit issued pursuant to section 63704, provided no land or space, including a highway or road right-of-way, exists between the property on which sand dune mining is authorized and the adjacent land.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63703 Great Lakes sand dune areas; comprehensive study and inventory.

Sec. 63703. The department, by July 1, 1977, shall make or cause to be made a comprehensive study and inventory of Great Lakes sand dune areas in the state. The study and inventory shall include all of the following:

(a) An economic study of the current and projected sand dune mining practices in the state, showing where the sand is marketed, its uses, and the amount of sand reserves.

(b) A geologic study of sand areas within this state, other than Great Lakes sand dune areas, that would contain sufficient reserves and have properties suitable for use as foundry core and molding sands or for other uses of sand.

(c) Sand dune areas or portions of sand dune areas that, for environmental or other reasons, should be protected through purchase by the state or other persons or interests, or easements including the acquisition of mineral rights by the state, and a priority list of sand dune areas to be acquired by the department.

(d) An identification and designation of barrier dunes along the shoreline, showing their effect on aesthetic, environmental, economic, industrial, and agricultural interests in this state.

(e) Methods for recycling or reusing sand for industrial and commercial purposes, along with alternatives to the use of dune sand and its economic impact.

(f) Recommendations for the protection and management of sand dune areas for uses other than sand mining.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63704 Sand dune mining; permit; requirements.

Sec. 63704. (1) A person shall not engage in sand dune mining within Great Lakes sand dune areas except as authorized by a permit issued by the department pursuant to part 13.

(2) Prior to receiving a permit from the department, a person shall submit all of the following:

(a) A permit application on a form provided by the department.

(b) An environmental impact statement of the proposed mining activity as prescribed by section 63705.

(c) A progressive cell-unit mining and reclamation plan for the proposed mining activity as prescribed by section 63706.

(d) A 15-year mining plan as prescribed by section 63707.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.63705 Environmental impact statement.

Sec. 63705. The environmental impact statement submitted to the department shall comply with the requirements of the department and shall include, but is not limited to, the following:

- (a) The compatibility of the proposed sand dune mining activity with adjacent existing land uses or land use plans.
- (b) The impact of the proposed sand dune mining activity on flora, fauna, or wildlife habitats.
- (c) The economic impact of the proposed sand dune mining activity on the surrounding area.
- (d) The effects of the proposed sand dune mining activity on groundwater supply, level, quality, and flow on site and within 1,000 feet of the proposed sand dune mining activity.
- (e) The effects of the proposed sand dune mining activity on adjacent surface resources.
- (f) The effect of the proposed sand dune mining activity on air quality within 1,000 feet of the proposed sand dune mining activity.
- (g) Whether the proposed sand dune mining activity is located within any of the following:
 - (i) 1,000 feet of a residence.
 - (ii) 2,000 feet of a school.
 - (iii) 500 feet of a commercial development.
- (h) Alternatives, if any, to the location of the proposed sand dune mining activity and the reasons for the choice of the location of the proposed sand dune mining activity over those alternatives.
- (i) A description of the environment as it exists prior to commencement of sand dune mining activity of area of the proposed sand dune mining activity. The environmental impact statement shall provide the greatest detail of the areas and the environmental elements that receive the major impacts from the proposed activity, but also shall include areas that may be impacted as an indirect result of the project.
- (j) An inventory of the physical environmental elements of the proposed site. The inventory shall be conducted at a time or at different times of the year that will provide the most complete information regarding the existing conditions of the area that will be impacted directly or indirectly by the proposed activity.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63706 Progressive cell-unit mining and reclamation plan; sand dune mining permit; requirements.

Sec. 63706. (1) The progressive cell-unit mining and reclamation plan, for both the total project and each cell-unit, shall include all of the following:

- (a) The method and direction of mining.
 - (b) Surface overburden stripping plans.
 - (c) The depth of grade level over the entire site from which the sand will be removed.
 - (d) Provisions for grading, revegetation, and stabilization that will minimize shore and soil erosion, sedimentation, and public safety problems.
 - (e) The location of buildings, equipment, stockpiles, roads, or other features necessary to the mining activity and provisions for their removal and restoration of the area at the project termination.
 - (f) Provisions for buffer areas, landscaping, and screening.
 - (g) The interim use or uses of reclaimed cell-units before the cessation of the entire mining operation.
 - (h) Maps and other supporting documents required by the department.
- (2) The department shall not issue a sand dune mining permit for any of the following:
- (a) A sand dune mining operation that existed before March 31, 1977, if the progressive cell-unit mining and reclamation plan includes more than 3 30-acre cell-units.
 - (b) A sand dune mining operation that commenced after March 31, 1977, if the progressive cell-unit mining and reclamation plan includes any cell-unit having an area exceeding 10 acres.
 - (c) The expansion of an existing sand dune mining operation if that expansion includes any cell-unit having an area exceeding 10 acres.
- (3) The progressive cell-unit mining and reclamation plan for sand dune mining permits issued 30 days or more after June 23, 1994 shall meet the following requirements:
- (a) All upland reclamation grades for sand dune mining operations shall have a slope not steeper than 1-foot vertical rise in a 3-foot horizontal plane, except that the department may approve plans that allow steeper reclaimed slopes in order to provide a smoother transition to undisturbed topographic features or the protection of existing environmental features.
 - (b) All submerged grades established by the excavation of material below the water table and the creation of a water body shall have underwater slopes as follows:
 - (i) For water bodies with a surface area less than 5 acres, the submerged grades shall be 1-foot vertical rise in a 3-foot horizontal plane, or flatter, to a depth of 6 feet.
 - (ii) For water bodies with a surface area 5 acres or greater, the submerged grades shall be 1-foot vertical

rise in a 6-foot horizontal plane, or flatter, to a depth of 6 feet.

(iii) For all water bodies where the progressive cell-unit mining and reclamation plan designates a final use after sand dune mining as public access, the area designated for public access shall have submerged grades of 1-foot vertical rise in a 10-foot horizontal plane, or flatter, to a depth of 6 feet.

(c) A 200-foot minimum setback distance from the property line to the cell-unit boundary line shall be provided on all cell-unit mining and reclamation plans, except the department may approve plans with less than 200-foot minimum setback distances if the department determines that the sand dune mining activity is compatible with the adjacent existing land use.

(d) A 500-foot minimum setback distance from the ordinary high-water mark of the Great Lakes shall be provided on all cell-unit mining and reclamation plans. As used in this subdivision, ordinary high-water mark means for the lands bordering or adjacent to waters or land affected by levels of the Great Lakes landward of the ordinary high-water mark as defined by section 32502, and those lands between the ordinary high-water mark and the water's edge.

(e) All cell-unit mining and reclamation plans shall include fencing or other techniques to minimize trespass or unauthorized access to the sand dune mining activity.

(f) If the proposed sand dune mining activity proposes to mine below the water table, the department may require a hydrogeological survey of the surrounding area.

(g) If threatened or endangered species are identified within the cell-unit boundaries, the cell-unit mining and reclamation plan shall indicate how the threatened or endangered species shall be protected or, if not protected, what mitigation measures shall be performed.

(h) If the proposed sand dune mining activity includes beneficiation or treatment of the sand, the application documents shall include specific plans depicting the methods, techniques, and manufacturer's material safety data sheets on all chemicals, or other additives that are not natural to the site, that will be utilized in the process. The operator shall also obtain all applicable state and federal permits prior to beginning the beneficiation process.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63707 Fifteen-year mining plan; submission of duplicate copy of cell-unit mining and reclamation plan.

Sec. 63707. (1) The 15-year mining plan shall include the following:

(a) The location and acreage of sand dune areas presently being mined and the amount of sand being mined.

(b) The location and acreage of sand dune areas not presently being mined but planned for that purpose and the amount of sand planned to be mined.

(c) A schedule indicating when the mining activity will begin in each sand dune area and the probable termination date of mining activities in each area.

(d) Additional information requested by the department.

(2) A duplicate copy of the cell-unit mining and reclamation plan shall be submitted to the soil conservation district in the county where the mining activity is proposed to occur. The soil conservation district shall have 30 days after receipt of the plan to review the proposal and submit written comments to the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63708 Sand dune mining permit; duration; renewal; contents; reasons for permitting removal of barrier dune; list of pending applications.

Sec. 63708. (1) A sand dune mining permit issued by the department is valid for not more than 5 years. A sand dune mining permit shall be renewed if the sand dune mining activities have been carried out in compliance with this part, the rules promulgated under this part, and the conditions of the sand dune mining permit issued by the department.

(2) The sand dune mining permit shall state any conditions, limitations, or other restrictions determined by the department, including any setback from the ordinary high-water mark of a Great Lake for the protection of the barrier dune.

(3) In granting a sand dune mining permit, if the department allows for the removal of all or a portion of

the barrier dune pursuant to this part, it shall submit to the commission written reasons for permitting the removal.

(4) The department shall provide a list of all pending sand dune mining applications upon a request from a person. The list shall give the name and address of each applicant, the legal description of the lands included in the project, and a summary statement of the purpose of the application.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.63709 Denial of sand dune mining permit.

Sec. 63709. The department shall deny a sand dune mining permit if, upon review of the environmental impact statement, it determines that the proposed sand dune mining activity is likely to pollute, impair, or destroy the air, water, or other natural resources or the public trust in those resources, as provided by part 17.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63710 Extraction of sand or other minerals by state.

Sec. 63710. The state or an instrumentality of the state shall not engage in the extraction of sand or other minerals from a sand dune area, except as required in the interest of public health and safety in an emergency situation resulting from a disaster as defined in section 2 of the emergency preparedness act, Act No. 390 of the Public Acts of 1976, being section 30.402 of the Michigan Compiled Laws.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63711 Assessment of fee for surveillance, monitoring, administration, and enforcement of part; disposition of unexpended fees; annual report of operator; confidentiality; failure to submit annual report; penalty for unpaid fee; records; annual report of department.

Sec. 63711. (1) For purposes of surveillance, monitoring, administration, and enforcement of this part, an operator is assessed a fee of not more than 10 cents per ton of sand mined from a sand dune area for the calendar year reported as described in subsection (2). Funds collected by the assessment of the fee shall not exceed the actual costs to the department of implementing the sections of this part that pertain to sand dune mining. Any fees collected under this subsection that are unexpended at the end of a fiscal year shall be credited to a separate fund of the department, carried over to the succeeding fiscal year, and deducted from the amount appropriated for that year for surveillance, monitoring, administration, and enforcement of this part for purposes of computing the fee to be assessed for that year.

(2) An operator shall file an annual report on or before January 31 of each year. The report shall show the areas mined and describe the progress of restoration and reclamation activities of the operator for the preceding calendar year. The report shall contain both of the following:

(a) The number of tons of sand mined from a sand dune area.

(b) Location of the sand dune area.

(3) The fee described in subsection (1) shall be due not more than 30 days after the department sends written notice to the operator of the amount due.

(4) The surveillance fee and annual report required by this section is confidential and shall not be available for public inspection without the written consent of the person filing the fee and report, except in accordance with judicial order.

(5) Failure to submit an annual report in compliance with rules promulgated by the department constitutes grounds for revocation of a permit.

(6) A penalty equal to 10% of the amount due, or \$1,000.00, whichever is greater, shall be assessed against the operator for a fee that is not paid when due. An unpaid fee and penalty shall constitute a debt and become the basis of a judgment against the operator. Penalties paid pursuant to this section shall be used for the implementation, administration, and enforcement of this part.

(7) Records upon which the annual report is based shall be preserved for 3 years and are subject to audit by the department.

(8) The department shall annually prepare and submit to the house of representatives and senate standing committees with jurisdiction over subject areas related to natural resources and the environment a report on

the sand mining surveillance activities undertaken by the department for the immediately preceding year and the cost of those activities.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63712 Conformance bond; reclassification of active cell-unit to interim cell-unit; notice of completion or acceptance of reclamation activity; compliance or approval required for mining or extraction; violation as grounds for revocation of permit.

Sec. 63712. (1) Prior to the initiation of a disturbance of land, the holder of a sand dune mining permit shall file with the department a conformance bond in favor of the state.

(2) The conformance bonds shall be filed for a maximum of 3 active cell-units and 3 cell-units in interim cell-unit status within the sand dune mining permit and shall be for an amount equal to \$10,000.00 per cell-unit or \$1,000.00 per each acre in the cell-units, whichever is greater, for cell-units bonded prior to June 23, 1994. For all cell-units that are bonded after June 23, 1994, the conformance bond shall be for an amount equal to \$20,000.00 per cell-unit or \$2,000.00 per each acre in the cell-units, whichever is greater. The bond for a cell-unit bonded prior to June 23, 1994 shall remain in effect until the cell-unit is released from the requirements of the conformance bond as provided in subsection (4) or the cell-unit boundary is revised as approved by the department. If an existing cell-unit boundary is revised, the conformance bond for the cell-unit shall be increased to the amounts provided for cell-units bonded after June 23, 1994.

(3) The conformance bonds shall be transferable to other cell-units contained within the sand dune mining permit upon faithful conformance with the approved reclamation plan as provided in section 63706.

(4) The conformance bond shall be conditioned upon the faithful performance of the requirements set forth in the approved reclamation plan as provided in section 63706. Liability under the conformance bond shall be maintained as long as the reclamation is not completed in compliance with the approved plan. The conformance bond shall remain in full force until the release of the cell-unit from the conformance bond requirements, including the period of time the cell-unit may have been placed in interim cell-unit status.

(5) The department shall not reclassify a cell-unit from active to interim cell-unit status until the following minimum conditions or requirements have been met:

(a) All permitted sand dune mining activities within the cell-unit have been completed.

(b) All extraction or processing equipment has been removed from the cell-unit, except that a roadway, conveyor, or slurry pipeline corridor may be maintained through a cell-unit and the cell-unit still may be reclassified to interim cell-unit status. This roadway, conveyor, or slurry pipeline corridor shall be considered part of the plant site and shall be removed and revegetated as provided by section 63706(1)(e).

(c) All upland areas within the cell-unit that were disturbed by sand dune mining have been regraded as provided in section 63706(3)(a).

(d) All submerged grades within the cell-unit established by sand dune mining have been regraded as provided in section 63706(3)(b).

(e) All upland areas within the cell-unit that were disturbed by sand dune mining have been revegetated utilizing native or indigenous species or other plant material pursuant to the approved progressive cell-unit mining and reclamation plan as provided in section 63706(1). The vegetation that has been planted shall have germinated or taken root and cover a minimum of 80% of the upland areas disturbed by sand dune mining, and no single area exposed to the elements shall be greater than 25 square feet.

(f) The operator shall provide proper measures to aid in the establishment of growth of the planted vegetation until adequate root systems have developed to provide sustained growth.

(6) The department may reclassify an active cell-unit to interim cell-unit status upon receipt of a written request by the operator. The department shall conduct an on-site inspection of the reclamation activities that have been completed and determine if the completed reclamation activities are adequate to reclassify the active cell-unit to interim cell-unit status. The department shall schedule the on-site inspection within 45 days of the written request. The department shall notify the operator within 30 days following the date of the inspection of the department's decision to grant or deny the request for interim cell-unit status. If the department determines the reclamation activities conducted within the cell-unit do not meet the conditions and requirements for interim cell-unit status, the notification shall include information detailing the reasons for denial.

(7) If the department determines the status of an active cell-unit does not meet the conditions or requirements for reclassification to interim cell-unit status, the operator may not reapply for reclassification of the same active cell-unit until 1 year from the previous request.

(8) Notification shall be given to the operator upon completion or acceptance by the department of the reclamation activity. The notification constitutes the release of the cell-unit from the conformance bond requirements if:

(a) All permitted sand dune mining activities within the cell-unit have been completed.

(b) All extraction or processing equipment has been removed from the cell-unit, except a roadway, conveyor, or slurry pipeline corridor may be maintained through a cell-unit and the cell-unit still released from bond. This roadway, conveyor, or slurry pipeline corridor shall be considered part of the plant site and shall be removed and revegetated as provided by section 63706(1)(e).

(c) All upland areas within the cell-unit that were disturbed by sand dune mining have been regraded as provided in section 63706(3)(a).

(d) All submerged grades within the cell-unit established by sand dune mining have been regraded as provided in section 63706(3)(b).

(e) All upland areas within the cell-unit that were disturbed by sand dune mining have been revegetated utilizing native or indigenous species or other plant material pursuant to the approved reclamation plan as provided in section 63706(1).

(f) There are no areas within the revegetated portions of the cell-unit where a 10-foot by 10-foot test plot can be measured with less than 80% survival of the planted vegetation.

(g) The plant material shall be required to sustain itself through 1 full growing season.

(h) There are no areas within the revegetated portion of the cell-unit with ongoing erosion, except some wind erosion shall be allowed if the wind erosion that is occurring does not threaten the stability of the regraded slopes or the ability of the plant material to accommodate the accretion of sand.

(9) Mining or extraction of sand dune minerals from any other cell-unit contained within the sand dune mining permit is prohibited until compliance or approval is attained from the department.

(10) A violation of this section constitutes grounds for revocation of the sand dune mining permit.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63713 Rules.

Sec. 63713. The department shall promulgate rules to implement and administer this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63714 Suspension or revocation of permit; restraining order, injunction, or other appropriate remedy; violation as misdemeanor; penalty.

Sec. 63714. (1) If the department finds that an operator is not in compliance with this part, the rules promulgated under this part, or a permit issued under this part, the department may suspend or revoke the permit.

(2) At the request of the department, the attorney general may institute an action in the circuit court for a restraining order or injunction or other appropriate remedy to prevent or preclude a violation of this part, a permit issued under this part, or the rules promulgated under this part. This shall be in addition to the rights provided in part 17.

(3) A person who violates this part or a permit issued under this part is guilty of a misdemeanor, punishable by a fine of not more than \$5,000.00.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBCHAPTER 5 PEAT EXTRACTION FROM STATE OWNED LANDS PART 641 PEAT EXTRACTION FROM STATE OWNED LANDS

324.64101 "Peat" defined.

Sec. 64101. As used in this part, "peat" means a deposit of unconsolidated, naturally occurring soil material consisting of decomposed and partially decomposed mosses, sedges, trees, and other wetland plants,

having 12% or greater organic carbon content on a dry weight basis.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.64102 Contracts for taking of peat from state-owned lands.

Sec. 64102. Subject to the requirements of this part, the department may make contracts with persons for the taking of peat from state owned lands upon terms consistent with this part, if not less than 10% of the surface area of all eligible and potentially leasable parcels of state owned land containing peat is set aside and preserved in its original natural state as a unique, irreplaceable natural resource of significant historical value.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.64103 Inventory and preliminary evaluation; classification of peat lands; public notice; public comments; public hearings; reclassification of lands.

Sec. 64103. (1) Beginning immediately after July 9, 1984, the department shall conduct an inventory of state owned land to determine the surface areas of peat present on those lands and to make a preliminary evaluation of the nature of the peat lands and the relationship of the peat resource to the surrounding wetlands and watershed. The preliminary evaluation shall consist of an analysis of the following data obtained from aerial photographs, a field check of surface features, and any information currently available:

(a) The importance of the peat land for flood and storm control by the hydrologic absorption and storage capacity of the peat land.

(b) The importance of the peat land for wildlife habitat including migratory waterfowl and rare, threatened, or endangered species.

(c) The presence of rare, threatened, or endangered plant species.

(d) The importance of the peat land for its natural pollution treatment capacity.

(e) The importance of the peat land for erosion control as a sedimentation area filtering basin.

(f) The potential impact on water quality for adjacent fish habitat and nursery grounds.

(g) The presence of historical or archeological features in or adjacent to the peat lands.

(h) The importance of the peat land for recreational, environmental, ecological, and educational purposes and any other purpose not covered in subdivisions (a) through (g).

(2) Based upon the inventory and preliminary evaluation described in subsection (1), the department shall classify the peat lands as either potentially leasable or not leasable according to the following:

(a) If the preliminary evaluation shows that a significant adverse impact is not likely to occur if the peat land is leased and the peat is taken, the peat land shall be classified as potentially leasable. A significant adverse impact may include an impact limited to the peat land.

(b) A peat land not classified as potentially leasable under subdivision (a) shall be classified as not leasable.

(3) The department shall provide a public notice of the completion of the inventory and classification required by subsections (1) and (2) including, but not limited to, publication in the agenda of the commission. The department shall accept public comment on the inventory and classifications for not less than 60 days from the date of notice. The department shall consider all pertinent public comments before finalizing the inventory and classifications. Public hearings may be held on the inventory and classification at the department's discretion. The department may reclassify lands upon receipt of further information if the public notice and the opportunity for public comment described in this subsection are provided.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.64104 Nomination of parcel; fee; direct lease contract.

Sec. 64104. (1) Except as provided in subsection (4), contracting for the taking of peat from state owned lands shall be initiated by the nomination of a parcel of land as provided in this section.

(2) Upon completion of the inventory and classification described in section 64103, a private party or the department may nominate a parcel classified as leasable for the taking of peat.

(3) A nomination by a private party shall be accompanied by a fee established by the department. The fee established shall be a nominal sum to assist in defraying the cost to the state of holding public auctions as described in section 64105. The fee shall be deposited in the fund created in section 64108.

(4) The department may enter into a direct lease contract for the taking of peat from state owned land classified as leasable under section 64103 upon obtaining from the direct lease applicant the same information described in section 64105(4) and upon consideration of the direct lease contract in the same manner as required by this part for a contract for the taking of peat from a nominated parcel. The department may enter into a direct lease contract for the taking of peat from state owned land classified as leasable only under either of the following circumstances:

(a) For the completion of an extraction operation area.

(b) For the consolidation of fractional interests owned or controlled by the applicant for the direct lease contract.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.64105 Public auction; exclusive opportunity to pursue contract; information required from highest bidder.

Sec. 64105. (1) On the basis of the inventory and the classification described in section 64103, the department shall determine whether to offer at a public auction the exclusive opportunity to pursue a contract for the taking of peat from a nominated parcel.

(2) The exclusive opportunity to pursue a contract for the taking of peat from a specified parcel of state owned land shall be awarded to the highest bidder at a public auction by sealed or oral bid.

(3) An exclusive opportunity to pursue a contract awarded under this section guarantees that, if the department decides to enter into a contract for the taking of peat from the nominated parcel as provided in section 64106, a contract shall be entered into with the highest bidder.

(4) Within 2 years after being awarded an exclusive opportunity to pursue a contract, the highest bidder shall provide to the department the following information:

(a) The quantity and quality of the peat that the bidder proposes to take from the nominated parcel.

(b) The capacity of the production facility that the bidder proposes to operate on the parcel.

(c) The date on which the bidder projects that the taking of peat will commence and the projected duration of the activity.

(d) An environmental assessment of the impact of the taking of the peat, including an analysis of the factors described in section 64106(2).

(e) Any other information the department determines to be reasonably necessary for the department to make the determination described in section 64106(2).

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.64106 Public hearing; determination; criteria; statement of reasons.

Sec. 64106. (1) After the submission of the information required by section 64105(4), and after review and evaluation of that information by the department, the department shall hold a public hearing to hear comments from the public on whether the department should enter into a contract for the taking of peat from a nominated parcel. This hearing may be consolidated with other legally required hearings related to the taking of peat from the nominated parcel.

(2) After completion of the public hearing required by subsection (1), the department shall decide whether to enter into a contract with the highest bidder based upon a determination that the taking of the peat from the parcel of nominated land would be in the public interest and would not unacceptably disrupt or destroy the aquatic or other resources of the peat land or the surrounding area. In making this determination, the department shall balance the benefit that reasonably may be expected to accrue from the taking of the peat against the reasonably foreseeable detriment of the taking, and, to that end, shall consider the following criteria:

(a) The relative extent of the public and private need for the taking of the peat.

(b) The availability of feasible and prudent alternative locations and methods for attaining the expected benefits of the taking of the peat.

(c) The extent and permanence of the beneficial or detrimental effects which the taking of the peat may have on the public and private uses to which the area is suited.

(d) The probable impact of the taking of peat in relation to the cumulative effect created by other existing and anticipated activities in the watershed where the peat is located.

(e) The probable impact of the taking of the peat on recognized historic, cultural, scenic, ecological,

educational, or recreational values, and on the public health, or fish or wildlife.

(f) The size of the peat surface area in relation to the size of the parcel of state owned land.

(g) The impact of the taking of the peat on subsurface water resources, recharging groundwater supplies and adjacent watersheds, and surface water bodies.

(h) The economic value, both public and private, of the taking of peat to the general area.

(3) The department shall state its reasons for deciding to enter or not to enter into a contract with the highest bidder for the taking of peat.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.64107 Terms of contract.

Sec. 64107. A contract entered into under this part for the taking of peat from state owned lands shall contain the following terms:

(a) A requirement that the lessee obtain worker's compensation insurance, liability insurance, and any other insurance reasonably required by the department.

(b) A requirement that the lessee hold the department harmless against all claims, demands, or judgments for loss, damage, death, or injury arising out of the lessee's activities or operations.

(c) A requirement that the lessee obtain and maintain public liability insurance in amounts reasonably required by the department.

(d) A prohibition against assignment of the contract or rights under the contract without the written approval of the department.

(e) A requirement that the lessee pay all taxes and assessments.

(f) A requirement that the lessee maintain the premises in a manner that safeguards the public health and safety.

(g) A provision that the term of the lease not exceed 10 years, with extension of that period in the discretion of the department.

(h) A requirement that the lessee pay rentals and minimum royalties established on a per acre basis or production royalties established by the department.

(i) A requirement that the lessee file a performance bond, an escrow account, or both, conditioned on the faithful performance of the agreements in the lease, including any agreements relating to the reclamation.

(j) A provision setting forth the department's rights as lessor.

(k) A provision setting forth the lessee's rights.

(l) A provision regarding the department's rights in the event of the default of the lessee.

(m) A requirement that the lessee's rights under the lease are conditioned on operation in accordance with the extraction and reclamation plan as approved by the department.

(n) A requirement that the lessee have an extraction and reclamation plan, subject to the approval of the department, that ensures, to the extent practicable, the extraction operations do not have significant adverse impacts on water quality, air quality, wildlife, or fishing resources of the state; that waste areas and product storage and conditioning areas are located, designed, and utilized to minimize aesthetic unattractiveness and fire hazards and to promote reclamation; that extraction is conducted in a manner that will prevent or mitigate hazardous conditions that will result from acidic drainage and blowing dust; and that the parcel is reclaimed in an acceptable manner given the following factors: the original state, condition, and appearance of the land including suitability for original flora and fauna, the uses of adjacent land, the necessary disruption caused by extraction operations, reclamation techniques, the public trust in the natural resources, and applicable statutes and ordinances.

(o) A requirement that the lessee have a plan for monitoring groundwater changes and surface water quality and flow rates.

(p) Any other term reasonably required by the department to protect the state's interest in the land, to protect the surrounding environment, or to assure the optimum economic return to the state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.64108 Peat resource conservation and development fund; creation; deposits.

Sec. 64108. (1) The peat resource conservation and development fund is created in the state treasury.

(2) Subject to subsections (3) and (4), the following shall be deposited in the peat resource conservation and development fund:

(a) Money received by the state under contracts for the taking of peat.

(b) The fees imposed under this part.

(3) Money received by the state under contracts for taking of peat from state owned lands acquired with game and fish protection funds shall be deposited in the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010.

(4) If the money in the fund exceeds \$250,000.00 at the end of a state fiscal year, the excess shall be deposited in the Michigan natural resources trust fund created in section 35 of article IX of the state constitution of 1963 and provided for in section 1902 or as otherwise provided by law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"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

324.64109 Expenditures; purposes.

Sec. 64109. The department shall expend the money in the fund and the interest and earnings on the money in the fund for the following purposes:

(a) To administer a peat resource conservation, development, and regulatory program consistent with this part.

(b) To perform the inventory of state lands described in section 64103, to fund further study of the state owned lands classified as not leasable under section 64103, and to provide for the reclassification of parcels consistent with the provisions of section 64103 based on the development of information unavailable during the classification required by section 64103(2).

(c) To fund research necessary for the further development of appropriate techniques for environmental monitoring of peat extraction sites, for development and protection of the state's peat resources, and for reclamation of lands following the extraction of peat.

(d) To pay for the costs to the state of personnel services, printing, postage, advertising, contractual services, and the rental of facilities associated with the offering of state owned lands for the purpose of taking peat.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.64110 Applicability of MCL 324.64103 to 324.64106; responsibility of meeting legal requirements.

Sec. 64110. The requirements of sections 64103 through 64106 do not apply to proposals for the taking of peat from state owned lands that have been the subject of department action prior to July 9, 1984. This provision does not relieve the department or any of the entities listed in section 64102 from the responsibility of meeting legal requirements applicable to the leasing of state lands for peat development that might otherwise be imposed by law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.64111 Rules.

Sec. 64111. The department may promulgate rules for the implementation of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA