

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

***** 324.30305 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) *****

324.30305 Activities not requiring permit under part; uses allowed without permit; farming operation in wetland not requiring permit; incidental creation of wetland; area created as result of commercial excavation; activities not subject to regulation; subsection (6) inapplicable to certain lands; "agricultural drain" defined.

Sec. 30305. (1) Activities that require a permit under part 325 or part 301 or a discharge that is authorized by a discharge permit under section 3112 or 3113 do not require a permit under this part.

(2) The following uses are allowed in a wetland without a permit subject to other laws of this state and the owner's regulation:

- (a) Fishing, trapping, or hunting.
- (b) Swimming or boating.
- (c) Hiking.

(d) Grazing of animals, including fencing and post placement if the fence is designed to control livestock, does not exceed 11 feet in height, and utilizes an amount of material that does not exceed that of a woven wire fence utilizing 6-inch vertical spacing and posts.

(e) Farming, horticulture, silviculture, lumbering, and ranching activities, including plowing, irrigation, irrigation ditching, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices. All of the following apply for the purposes of this subdivision:

(i) Beginning October 1, 2013, to be allowed in a wetland without a permit, these activities shall be part of an established ongoing farming, ranching, horticultural, or silvicultural operation. Farming and silvicultural activities on areas lying fallow as part of a conventional rotational cycle are part of an established ongoing operation, unless modifications to the hydrological regime or mechanized land clearing are necessary to resume operation. Activities that bring into farming, ranching, horticultural, or silvicultural use an area not in any of these uses, or that convert an area from a forested or silvicultural use to a farming, ranching, or horticultural use, are not part of an established ongoing operation.

(ii) Minor drainage does not include drainage associated with the immediate or gradual conversion of a wetland to a nonwetland, or conversion from 1 wetland use to another. Minor drainage does not include the construction of a canal, ditch, dike, or other waterway or structure that drains or otherwise significantly modifies a stream, lake, or wetland.

(iii) Wetland altered under this subdivision shall not be used for a purpose other than a purpose described in this section without a permit from the department.

(f) Maintenance or operation of serviceable structures in existence on October 1, 1980 or constructed pursuant to this part or former 1979 PA 203.

(g) Construction or maintenance of farm or stock ponds.

(h) Maintenance of an agricultural drain, regardless of outlet, if all of the following requirements are met:

(i) The maintenance includes only activities that maintain the location, depth, and bottom width of the drain as constructed or modified at any time before July 1, 2014.

(ii) The maintenance is performed by the landowner or pursuant to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.

(iii) The maintenance does not include any modification that results in additional wetland drainage or conversion of a wetland to a use to which it was not previously subject.

(i) Maintenance of a drain that was legally established and constructed pursuant to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, if the drain was constructed before January 1, 1973 or under a permit issued pursuant to this part. As used in this subdivision, "maintenance of a drain" means the physical preservation of the location, depth, and bottom width of a drain and appurtenant structures to restore the function and approximate capacity of the drain as constructed or modified at any time before July 1, 2014, including the placement of spoils removed from the drain in locations along that drain where spoils have been previously placed. Maintenance of a drain under this subdivision does not include any modification that results in additional wetland drainage or conversion of a wetland to a use to which it was not previously

subject.

(j) Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining or forestry equipment, if the roads are constructed and maintained in a manner to ensure that any adverse effect on the wetland will be minimized. Borrow material for road construction or maintenance shall be taken from upland sources if feasible. In determining whether an alternative will minimize any adverse effect on the wetland, the department shall consider cost, existing technology, and logistics in light of overall project purposes.

(k) Maintenance of public streets, highways, or roads that meets all of the following requirements:

(i) Does not include any modification that changes the original location or footprint.

(ii) Is done in a manner that minimizes any adverse effect on the wetland.

(l) Maintenance or repair of utility lines and associated support structures that meets all of the following requirements:

(i) Is done in a manner that minimizes any adverse effect on the wetland.

(ii) Does not include any modification to the character, scope, or size of the originally constructed design.

(iii) Does not convert a wetland area to a use to which it was not previously subject.

For the purposes of this subdivision and subdivision (m), "utility line" means any pipe or pipeline used for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone or telegraph messages, or radio or television communication.

(m) Installation of utility lines having a diameter of 6 inches or less using directional drilling or boring, or knifing-in, and the placement of poles with minimal (less than 1 cubic yard) structure support, if the utility lines and poles are installed in a manner that minimizes any adverse effect on the wetland. Directional drilling or boring under this subdivision shall meet all of the following requirements:

(i) The top of the utility line is at least 4 feet below the soil surface of the wetland. However, if the presence of rock prevents the placement of the utility line at the depth otherwise required by this subparagraph, the bottom of the utility line is not placed higher than the top of the rock.

(ii) The entry and exit holes are located a sufficient distance from the wetland to ensure that disturbance of the wetland does not occur.

(iii) The operation does not result in the eruption or release of any drilling fluids up through the ground and into the wetland and there is an adequate plan to respond to any release of drilling mud or other fill material.

(n) Operation or maintenance, including reconstruction of recently damaged parts, of serviceable dikes and levees in existence on October 1, 1980 or constructed pursuant to this part or former 1979 PA 203.

(o) Placement of biological residuals from activities, including the cutting of woody vegetation or the in-place grinding of tree stumps, performed under this section within a wetland, if all the biological residuals originate within that wetland.

(3) An activity in a wetland that was effectively drained for farming before October 1, 1980 and that on and after October 1, 1980 has continued to be effectively drained as part of an ongoing farming operation is not subject to regulation under this part.

(4) A wetland that is incidentally created as a result of 1 or more of the following activities is not subject to regulation under this part:

(a) Excavation as part of commercial sand, gravel, or mineral mining, if the area was not a wetland before excavation. This exemption from regulation applies until the property on which the wetland is located meets both of the following requirements:

(i) Is no longer used for excavation as part of commercial sand, gravel, or mineral mining.

(ii) Is being used for another purpose unrelated to excavation as part of commercial sand, gravel, or mineral mining.

(b) Construction and operation of a water treatment pond, lagoon, or storm water facility in compliance with the requirements of state or federal water pollution control laws.

(c) A diked area associated with a landfill if the landfill complies with the terms of the landfill construction permit and if the diked area was not a wetland before diking.

(d) Construction of drains in upland for the sole purpose of removing excess soil moisture from upland areas that are primarily in agricultural use.

(e) Construction of roadside ditches in upland for the sole purpose of removing excess soil moisture from upland.

(f) An agricultural soil and water conservation practice designed, constructed, and maintained for the purpose of enhancing water quality.

(5) An area that becomes contiguous to a water body created as a result of commercial excavation for sand, gravel, or mineral mining is not subject to regulation under this part solely because it is contiguous to the

created water body. This exemption from regulation applies until the property on which the wetland is located meets both of the following requirements:

- (a) Is no longer used for excavation as part of commercial sand, gravel, or mineral mining.
- (b) Is being used for another purpose unrelated to excavation as part of commercial sand, gravel, or mineral mining.

(6) Except as provided in subsection (7), the following activities are not subject to regulation under this part:

(a) Leveling of sand, removal of vegetation, grooming of soil, or removal of debris, in an area of unconsolidated material predominantly composed of sand, rock, or pebbles, located between the ordinary high-water mark and the water's edge.

(b) Mowing of vegetation between the ordinary high-water mark and the water's edge.

(7) Subsection (6) does not apply to lands included in the survey of the delta of the St. Clair River, otherwise referred to as the St. Clair flats, located within Clay township, St. Clair county, as provided for in 1899 PA 175.

(8) As used in this part, "agricultural drain" means a human-made conveyance of water that meets all of the following requirements:

(a) Does not have continuous flow.

(b) Flows primarily as a result of precipitation-induced surface runoff or groundwater drained through subsurface drainage systems.

(c) Serves agricultural production.

(d) Was constructed before January 1, 1973, or was constructed in compliance with this part or former 1979 PA 203.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 550, Imd. Eff. Jan. 15, 1997;—Am. 2003, Act 14, Imd. Eff. June 5, 2003;—Am. 2012, Act 247, Imd. Eff. July 2, 2012;—Am. 2013, Act 98, Imd. Eff. July 2, 2013;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

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