

# NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)

## Act 451 of 1994

### THE GREAT LAKES

#### PART 321

#### THE GREAT LAKES COMPACT AUTHORIZATION

##### **324.32101 Great Lakes compact; cooperation with Ontario and bordering states; agreement authority.**

Sec. 32101. So that the state of Michigan can consult and cooperate with the other states bordering on the Great Lakes and the province of Ontario in regard to all matters and things affecting the rights and interests of this state and such other states and province, in the management, control and supervision of the waters of the Great Lakes including the marine life therein, the governor of the state of Michigan is hereby authorized and empowered for and in the name of the state of Michigan to execute an agreement or agreements with any or all the other states bordering on the Great Lakes and the province of Ontario, in conformity with the terms, conditions and provisions contained in this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

##### **324.32102 Compact; ratification.**

Sec. 32102. Such compact shall become operative whenever, in addition to Michigan, any 3 of the states of Wisconsin, Illinois, Indiana, Ohio, Pennsylvania, New York and Minnesota shall have ratified it and congress has given its consent, if needed. The province of Ontario may become a party to this compact by taking such action as its laws and the laws of the Dominion of Canada may prescribe for ratification.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

##### **324.32103 Compact; terms; conditions; provisions.**

Sec. 32103. In addition to other pertinent and necessary provisions which are in consonance with the expressed purposes of the compact as herein provided, such a compact shall contain the following terms, conditions and provisions: Said compact shall authorize the compacting parties to do all things reasonably necessary for carrying out the purposes of this part but such a compact shall be entered into solely for the purpose of empowering the duly appointed representatives of said states and the province of Ontario to meet, consult with and make recommendations to their respective governors, legislative bodies or governmental agencies and to the international joint commission established under the treaty of 1909 between the United States and Great Britain with respect to the management, control and supervision of the waters of the Great Lakes including the marine life therein. However, it is distinctly provided that any such recommendation and any decision or agreement arrived at among the compacting parties shall at no time have any force of law or be binding on any compacting party.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

##### **324.32104 Compact commission; memberships.**

Sec. 32104. Each compacting party shall have the right to designate 5 representatives to such interstate compact commission to be known as the Great Lakes compact commission. The representatives from this state shall be as provided in section 32202.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

##### **324.32105 Compact; effective date; commission meetings; officers; duties; quorum.**

Sec. 32105. The compact herein provided shall become effective upon the adoption of laws by the states referred to in section 2 in conformity with the provisions of this part. When, in addition to Michigan, any 3 of the states of Wisconsin, Illinois, Indiana, Ohio, Pennsylvania, New York, and Minnesota have adopted such

laws and the congress of the United States has given its consent, if needed, the designated representatives of the Great Lakes compact commission shall meet upon the call of any governor of any of the ratifying states or the legally designated governmental official of the province of Ontario. At such meeting or at any subsequent meeting the duly designated representatives shall adopt a compact agreement not inconsistent in any way with this part and containing the necessary provisions for enabling the commission to carry out the purposes of this part. At such meeting or at subsequent meetings, the representatives composing such commission shall select a chairman and a secretary from among their numbers and such other officers as to them may seem expedient and shall prescribe the duties of such officers. A 2/3 majority of all representatives designated shall be sufficient to form a quorum for the transaction of business. Said commission shall meet from time to time or at such places or locations as it shall seem necessary and proper or shall meet upon the call of the chairman and such call shall designate the time and place of meeting and the purpose thereof.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32106 Compact; commission; records of meetings and proceedings; reports.**

Sec. 32106. Said commission shall keep a written record of its meetings and proceedings and shall annually make a report thereof to be submitted to the duly designated official of each compacting party.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32107 Compact commission; expenses.**

Sec. 32107. Each compacting party shall pay for the expenses of its representatives on said commission and each compacting party shall pay to the secretary of the commission a pro rata share of the expenses of said commission. No expenditures shall be authorized under the provisions of this part unless and until moneys shall be appropriated therefor by the legislature.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **PART 322**

#### **GREAT LAKES BASIN COMPACT**

#### **324.32201 Great Lakes basin compact; ratification; contents.**

Sec. 32201. The great lakes basin compact is hereby ratified, enacted into law, and entered into by this state as a party thereto with any other state or province which, pursuant to article II of said compact, has legally joined therein in the form substantially as follows:

##### **GREAT LAKES BASIN COMPACT**

The party states solemnly agree:

##### **Article I. Purpose**

The purposes of this compact are, through means of joint or cooperative action:

1. To promote the orderly, integrated, and comprehensive development, use, and conservation of the water resources of the Great Lakes Basin (hereinafter called the Basin).
2. To plan for the welfare and development of the water resources of the Basin as a whole as well as for those portions of the Basin which may have problems of special concern.
3. To make it possible for the states of the Basin and their people to derive the maximum benefit from utilization of public works, in the form of navigational aids or otherwise, which may exist or which may be constructed from time to time.
4. To advise in securing and maintaining a proper balance among industrial, commercial, agricultural, water supply, residential, recreational, and other legitimate uses of the water resources of the Basin.
5. To establish and maintain an intergovernmental agency to the end that the purposes of this compact may be accomplished more effectively.

##### **Article II. Enactment and Effective Date**

A. This compact shall enter into force and become effective and binding when it has been enacted by the legislatures of any 4 of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin and thereafter shall enter into force and become effective and binding as to any other of said states when enacted by the legislature thereof.

B. The Province of Ontario and the Province of Quebec, or either of them, may become states party to this compact by taking such action as their laws and the laws of the government of Canada may prescribe for adherence thereto. For the purpose of this compact the word "state" shall be construed to include a Province of Canada.

#### Article III. The Basin

The Great Lakes Commission created by Article IV of this compact shall exercise its powers and perform its functions in respect to the Basin which, for the purposes of this compact, shall consist of so much of the following as may be within the party states:

1. Lakes Erie, Huron, Michigan, Ontario, St. Clair, Superior, and the St. Lawrence River, together with any and all natural or man-made water interconnections between or among them.

2. All rivers, ponds, lakes, streams, and other watercourses which, in their natural state or in their prevailing condition, are tributary to Lakes Erie, Huron, Michigan, Ontario, St. Clair, and Superior or any of them or which comprise part of any watershed draining into any of said lakes.

#### Article IV. The Commission

A. There is hereby created an agency of the party states to be known as The Great Lakes Commission (hereinafter called the Commission). In that name the Commission may sue and be sued, acquire, hold and convey real and personal property and any interest therein. The Commission shall have a seal with the words "The Great Lakes Commission" and such other design as it may prescribe engraved thereon by which it shall authenticate its proceedings. Transactions involving real or personal property shall conform to the laws of the state in which the property is located, and the Commission may by bylaws provide for the execution and acknowledgment of all instruments in its behalf.

B. The Commission shall be composed of not less than 3 commissioners nor more than 5 commissioners from each party state designated or appointed in accordance with the law of the state which they represent and serving and subject to removal in accordance with such law.

C. Each state delegation shall be entitled to 3 votes in the Commission. The presence of commissioners from a majority of the party states shall constitute a quorum for the transaction of business at any meeting of the Commission. Actions of the Commission shall be by a majority of the votes cast except that any recommendations made pursuant to Article VI of this compact shall require an affirmative vote of not less than a majority of the votes cast from each of a majority of the states present and voting.

D. The commissioners of any 2 or more party states may meet separately to consider problems of particular interest to their states but no action taken at any such meeting shall be deemed an action of the Commission unless and until the Commission shall specifically approve the same.

E. In the absence of any commissioner, his or her vote may be cast by another representative or commissioner of his or her state provided that said commissioner or other representative casting said vote shall have a written proxy in proper form as may be required by the Commission.

F. The Commission shall elect annually from among its members a chairman and vice-chairman. The Commission shall appoint an Executive Director who shall also act as secretary-treasurer, and who shall be bonded in such amount as the Commission may require. The Executive Director shall serve at the pleasure of the Commission and at such compensation and under such terms and conditions as may be fixed by it. The Executive Director shall be custodian of the records of the Commission with authority to affix the Commission's official seal and to attest to and certify such records or copies thereof.

G. The Executive Director, subject to the approval of the Commission in such cases as its bylaws may provide, shall appoint and remove or discharge such personnel as may be necessary for the performance of the Commission's functions. Subject to the aforesaid approval, the Executive Director may fix their compensation, define their duties, and require bonds of such of them as the Commission may designate.

H. The Executive Director, on behalf of, as trustee for, and with the approval of the Commission, may borrow, accept, or contract for the services of personnel from any state or government or any subdivision or agency thereof, from any intergovernmental agency, or from any institution, person, firm or corporation; and may accept for any of the Commission's purposes and functions under this compact any and all donations, gifts, and grants of money, equipment, supplies, materials, and services from any state or government or any subdivision or agency thereof or intergovernmental agency or from any institution, person, firm or corporation and may receive and utilize the same.

I. The Commission may establish and maintain 1 or more offices for the transacting of its business and for such purposes the Executive Director, on behalf of, as trustee for, and with the approval of the Commission, may acquire, hold and dispose of real and personal property necessary to the performance of its functions.

J. No tax levied or imposed by any party state or any political subdivision thereof shall be deemed to apply to property, transactions, or income of the Commission.

K. The Commission may adopt, amend and rescind bylaws, rules and regulations for the conduct of its

business.

L. The organization meeting of the Commission shall be held within 6 months from the effective date of this compact.

M. The Commission and its Executive Director shall make available to the party states any information within its possession and shall always provide free access to its records by duly authorized representatives of such party states.

N. The Commission shall keep a written record of its meetings and proceedings and shall annually make a report thereof to be submitted to the duly designated official of each party state.

O. The Commission shall make and transmit annually to the legislature and governor of each party state a report covering the activities of the Commission for the preceding year and embodying such recommendations as may have been adopted by the Commission. The Commission may issue such additional reports as it may deem desirable.

#### Article V. Finance

A. The members of the Commission shall serve without compensation, but the expenses of each commissioner shall be met by the state which he or she represents in accordance with the law of that state. All other expenses incurred by the Commission in the course of exercising the powers conferred upon it by this compact unless met in some other manner specifically provided by this compact, shall be paid by the Commission out of its own funds.

B. The Commission shall submit to the executive head or designated officer of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

C. Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. Detailed commission budgets shall be recommended by a majority of the votes cast, and the costs shall be allocated equitably among the party states in accordance with their respective interests.

D. The Commission shall not pledge the credit of any party state. The Commission may meet any of its obligations in whole or in part with funds available to it under Article IV (H) of this compact, provided that the Commission takes specific action setting aside such funds prior to the incurring of any obligations to be met in whole or in part in this manner. Except where the Commission makes use of funds available to it under Article IV (H) hereof, the Commission shall not incur any obligations prior to the allotment of funds by the party states adequate to meet the same.

E. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under the bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become a part of the annual report of the Commission.

F. The accounts of the Commission shall be open at any reasonable time for inspection by such agency, representative or representatives of the party states as may be duly constituted for that purpose and by others who may be authorized by the Commission.

#### Article VI. Powers of Commission

The Commission shall have power to:

A. Collect, correlate, interpret, and report on data relating to the water resources and the use thereof in the Basin or any portion thereof.

B. Recommend methods for the orderly, efficient, and balanced development, use, and conservation of the water resources of the Basin or any portion thereof to the party states and to any other governments or agencies having interests in or jurisdiction over the Basin or any portion thereof.

C. Consider the need for and desirability of public works and improvements relating to the water resources in the Basin or any portion thereof.

D. Consider means of improving navigation and port facilities in the Basin or any portion thereof.

E. Consider means of improving and maintaining the fisheries of the Basin or any portion thereof.

F. Recommend policies relating to water resources including the institution and alteration of flood plain and other zoning laws, ordinances and regulations.

G. Recommend uniform or other laws, ordinances, or regulations relating to the development, use and conservation of the Basin's water resources to the party states or any of them and to other governments, political subdivisions, agencies, or intergovernmental bodies having interests in or jurisdiction sufficient to affect conditions in the Basin or any portion thereof.

H. Consider and recommend amendments or agreements supplementary to this compact to the party states or any of them, and assist in the formulation and drafting of such amendments or supplementary agreements.

I. Prepare and publish reports, bulletins, and publications appropriate to this work and fix reasonable sale prices therefor.

J. With respect to the water resources of the Basin or any portion thereof, recommend agreements between the governments of the United States and Canada.

K. Recommend mutual arrangements expressed by concurrent or reciprocal legislation on the part of Congress and the Parliament of Canada including but not limited to such agreements and mutual arrangements as are provided for by Article XIII of the Treaty of 1909 Relating to Boundary Waters and Questions Arising Between the United States and Canada. (Treaty Series, No. 548).

L. Cooperate with the governments of the United States and of Canada, the party states and any public or private agencies or bodies having interests in or jurisdiction sufficient to affect the Basin or any portion thereof.

M. At the request of the United States, or in the event that a Province shall be a party state, at the request of the government of Canada, assist in the negotiation and formulation of any treaty or other mutual arrangement or agreement between the United States and Canada with reference to the Basin or any portion thereof.

N. Make any recommendation and do all things necessary and proper to carry out the powers conferred upon the Commission by this compact; provided that no action of the Commission shall have the force of law in, or be binding upon, any party state.

#### Article VII. State Action

Each party state agrees to consider the action the Commission recommends in respect to:

A. Stabilization of lake levels.

B. Measures for combating pollution, beach erosion, floods, and shore inundation.

C. Uniformity in navigation regulations within the constitutional powers of the states.

D. Proposed navigation aids and improvements.

E. Uniformity or effective coordinating action in fishing laws and regulations and cooperative action to eradicate destructive and parasitical forces endangering the fisheries, wild life and other water resources.

F. Suitable hydroelectric power developments.

G. Cooperative programs for control of soil and bank erosion for the general improvement of the Basin.

H. Diversion of waters from and into the Basin.

I. Other measures the Commission may recommend to the states pursuant to Article VI of this compact.

#### Article VIII. Renunciation

This compact shall continue in force and remain binding upon each party state until renounced by act of the legislature of such state, in such form and manner as it may choose and as may be valid and effective to repeal a statute of said state; provided that such renunciation shall not become effective until 6 months after notice of such action shall have been officially communicated in writing to the executive head of the other party states.

#### Article IX. Construction and Severability

It is intended that the provisions of this compact shall be reasonably and liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or in the case of a Province, to the British North America Act of 1867 as amended, or the applicability thereof to any state, agency, person or circumstance is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to any state, agency, person or circumstance shall not be affected thereby, provided further that if this compact shall be held contrary to the constitution of the United States, or in the case of a Province, to the British North America Act of 1867 as amended, or of any party state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32202 Great Lakes commission; membership; oath; expenses; voting rights.**

Sec. 32202. (1) For purposes of this section through section 32206, "commission" means the Great Lakes commission established in the compact entered into by this part.

(2) In pursuance of article IV of the compact, there shall be 5 commissioners on the Great Lakes commission from this state. Each commissioner shall have all of the powers conferred on a commissioner by the compact or which shall be necessary or incidental to the performance of his or her functions as a commissioner. For this state, the governor, or the governor's designee, the attorney general, or the attorney general's designee, an appointee of the majority leader of the senate, and an appointee of the speaker of the



house of representatives shall be members of the Michigan representation. In addition, the governor shall appoint, with the advice and consent of the senate, the remaining 1 member who shall come from groups or organizations interested in or affected by the Great Lakes, which member shall serve at the governor's pleasure. The appointees of the governor, the majority leader of the senate, and of the speaker of the house of representatives, before entering upon the performance of their office, shall take and subscribe to the constitutional oath of office. Each commissioner shall receive necessary expenses incurred in the performance of his or her duties. Each commissioner shall have the right to cast 3/5 of a vote whenever a vote is required by the terms of the compact.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For the designation of the director of the department of environment, Great Lakes, and energy as a commissioner on the Great Lakes commission, see E.R.O. 2019-1, compiled at MCL 324.99923.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32203 Commission; cooperation by state officers.**

Sec. 32203. All officers of this state are hereby authorized and directed to do all things falling within their respective jurisdictions necessary to or incidental to the carrying out of said compact in every particular, it being hereby declared to be the policy of this state to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments, and persons of and in the state government or administration of this state are hereby authorized and directed at reasonable times and upon request of said commission to furnish the said commission with information and data possessed by them or any of them and to aid said commission by loan of personnel or other means lying within their legal powers respectively.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32204 Commission; budget; appropriations.**

Sec. 32204. The budget of the estimated expenditures of the commission shall be submitted to the director and to the director of the department of commerce for such period and in form as shall be required by them. Neither the compact nor this part shall be construed to commit, or authorize the expenditure of, any funds of the state except in pursuance of appropriations made by the legislature.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32205 Basin compact; transmission of copy of part and compact to other parties.**

Sec. 32205. The governor is hereby authorized and directed to transmit a duly authenticated copy of this part and the compact contained herein to each jurisdiction now party to the compact and to each jurisdiction which is or subsequently shall become party to the compact.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32206 Limiting diversions of water of Great Lakes.**

Sec. 32206. The commissioners who represent this state shall request the commission to consider and recommend amendments or agreements supplementary to the Great Lakes basin compact that would give the party states the authority to limit diversions of the waters of the Great Lakes.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **PART 323**

### **SHORELANDS PROTECTION AND MANAGEMENT**

#### **324.32301 Definitions.**

Sec. 32301. As used in this part:

(a) "Connecting waterway" means the St. Marys river, Detroit river, St. Clair river, or Lake St. Clair.

(b) "Environmental area" means an area of the shoreland determined by the department on the basis of studies and surveys to be necessary for the preservation and maintenance of fish and wildlife.

(c) "High-risk area" means an area of the shoreland that is determined by the department on the basis of studies and surveys to be subject to erosion.

(d) "Land to be zoned or regulated" or "land to be zoned" means the land in this state that borders or is adjacent to a Great Lake or a connecting waterway and that, except for flood risk areas, is situated within 1,000 feet landward from the ordinary high-water mark as defined in section 32501, land bordering or adjacent to waters affected by levels of the Great Lakes landward of the ordinary high-water mark as defined by section 30101, and land between the ordinary high-water mark and the water's edge.

(e) "Shoreland" means the land, water, and land beneath the water that is in close proximity to the shoreline of a Great Lake or a connecting waterway.

(f) "Shoreline" means that area of the shorelands where land and water meet.

(g) "Flood risk area" means the area of the shoreland that is determined by the department on the basis of studies and surveys to be subject to flooding from effects of levels of the Great Lakes and is not limited to 1,000 feet.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32302 Shoreland engineering study; determinations.**

Sec. 32302. By April 1, 1972, the department shall make or cause to be made an engineering study of the shoreland to determine all of the following:

(a) The high-risk areas.

(b) The areas of the shorelands that are platted or have buildings or structures and that require protection from erosion.

(c) The type of protection that is best suited for an area determined in subdivision (b).

(d) A cost estimate of the construction and maintenance for each type of protection determined in subdivision (c).

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32303 Engineering study.**

Sec. 32303. Before January 1, 1975, the department shall make or cause to be made an engineering study of the shoreland to determine:

(a) Flood risk areas.

(b) The frequency with which a flood risk area can be expected to be flooded.

(c) Appropriate rules necessary to prevent damage or destruction to property.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32304 Environmental study.**

Sec. 32304. By April 1, 1972, the department shall make or cause to be made an environmental study of the shoreland to determine all of the following:

(a) The environmental areas.

(b) The areas of marshes along and adjacent to the shorelands.

(c) The marshes and fish and wildlife habitat areas that should be protected by shoreland zoning or regulation.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32305 Use of high risk area; prevention of property loss; notice of determinations and recommendations.**

Sec. 32305. The department pursuant to section 32302 shall determine if the use of a high-risk area shall be regulated to prevent property loss or if suitable methods of protection shall be installed to prevent property loss. The department shall notify a local unit of government, the department of labor, the department of treasury, and the department of commerce or other affected state agencies of its determinations and recommendations relative to a high-risk area that is in a local unit of government.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32306 Use of flood risk area; prevention of property loss; notice of determinations and recommendations.**

Sec. 32306. The department pursuant to section 32303 shall determine if the use of a flood risk area shall be regulated to prevent property loss or if suitable methods of protection shall be installed to prevent property loss. The department shall notify a local unit of government, the department of labor, the department of treasury, and the department of commerce or other affected state agencies of its determinations and recommendations relative to a flood risk area that is in a local unit of government.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32307 Environmental area; use; regulation.**

Sec. 32307. The department in accordance with section 32304 shall notify a local unit of government of the existence of any environmental area that is in a local unit of government and shall formulate appropriate use regulations necessary to protect an environmental area.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32308 County zoning.**

Sec. 32308. Until July 1, 1975, a county, pursuant to rules promulgated under section 32313 and the county rural zoning enabling act, Act No. 183 of the Public Acts of 1943, being sections 125.201 to 125.232 of the Michigan Compiled Laws, may zone any shoreland and land to be zoned that is in the county.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32309 City or village zoning.**

Sec. 32309. Until July 1, 1975, a city or village, pursuant to rules promulgated under section 32313 and Act No. 207 of the Public Acts of 1921, being sections 125.581 to 125.592 of the Michigan Compiled Laws, may zone any shoreland and land to be zoned that is in the city or village.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32310 Township zoning.**

Sec. 32310. Until July 1, 1975, a township, pursuant to rules promulgated under section 32313 and the township rural zoning act, Act No. 184 of the Public Acts of 1943, being sections 125.271 to 125.301 of the Michigan Compiled Laws, may zone any shoreland and land to be zoned that is in the township.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32311 Approval or disapproval of zoning ordinance regulating high risk area, flood risk**



**area, or environmental area.**

Sec. 32311. An existing zoning ordinance or a zoning ordinance or a modification or amendment to a zoning ordinance that regulates a high-risk area, a flood risk area, or an environmental area shall be submitted to the department for approval or disapproval. The department shall determine if the ordinance, modification, or amendment adequately prevents property damage or prevents damage to an environmental area, a high-risk area, or a flood risk area. If an ordinance, modification, or amendment is disapproved by the department, it shall not have force or effect until modified by the local unit of government and approved by the department.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.32312 Rules; fee required with permit application or project; disposition of fees; violation; restraining order.**

Sec. 32312. (1) To regulate the uses and development of high-risk areas, flood risk areas, and environmental areas and to implement the purposes of this part, the department shall promulgate rules. If permits are required under rules promulgated under this part, the permits must be issued pursuant to the rules and part 13. Except as provided under subsection (2), until October 1, 2025, if permits are required pursuant to rules promulgated under this part, an application for a permit must be accompanied by a fee as follows:

(a) For a commercial or multifamily residential project, \$500.00.

(b) For a single-family home construction, \$100.00.

(c) For an addition to an existing single-family home or for a project that has a minor impact on fish and wildlife resources in environmental areas as determined by the department, \$50.00.

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

(a) Part 301.

(b) Part 303.

(c) Part 325.

(d) Section 3104.

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

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

(4) A circuit court, upon petition and a showing by the department that a rule promulgated under subsection (1) has been violated, shall issue any necessary order to the defendant to correct the violation or to restrain the defendant from further violation of the rule.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 168, Imd. Eff. Oct. 9, 1995;—Am. 1999, Act 106, Imd. Eff. July 7, 1999;—Am. 2003, Act 163, Imd. Eff. Aug. 12, 2003;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2008, Act 276, Imd. Eff. Sept. 29, 2008;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2015, Act 76, Eff. Oct. 1, 2015;—Am. 2019, Act 84, Imd. Eff. Sept. 30, 2019;—Am. 2021, Act 91, Imd. Eff. Oct. 20, 2021.

**Popular name:** Act 451

**Popular name:** NREPA

**Administrative rules:** R 281.21 et seq. of the Michigan Administrative Code.

**324.32312a Construction of above grade walls with movable brick.**

Sec. 32312a. Notwithstanding any other provision of this part or the rules promulgated under this part, the department shall allow above grade walls to be constructed with movable brick.

**History:** Add. 1997, Act 126, Imd. Eff. Nov. 5, 1997.

**Popular name:** Act 451

**Popular name:** NREPA

**324.32313 Use and management plan; contents; hearings; submission of plan copies to governor and legislature.**

Sec. 32313. (1) By October 1, 1972, the department shall, in compliance with the purposes of this part, prepare a plan for the use and management of shoreland. The plan shall include but not be limited to all of the following:

(a) An inventory and identification of the use and development characteristics of the shoreland; the general physical and man-influenced shoreline features; the existing and proposed municipal and industrial water intakes and sewage and industrial waste outfalls; and high-risk areas and environmental areas.

- (b) An inventory of existing federal, state, regional, and local plans for the management of the shorelands.
- (c) An identification of problems associated with shoreland use, development, conservation, and protection.
- (d) A provision for a continuing inventory of shoreland and estuarine resources.
- (e) Provisions for further studies and research pertaining to shoreland management.
- (f) Identification of the high-risk and environmental areas that need protection.
- (g) Recommendations that do all of the following:
  - (i) Provide procedures for the resolution of conflicts arising from multiple use.
  - (ii) Foster the widest variety of beneficial uses.
  - (iii) Provide for the necessary enforcement powers to assure compliance with plans and to resolve conflicts in uses.
  - (iv) Provide criteria for the protection of shorelands from erosion or inundation, for aquatic recreation, for shore growth and cover, for low-lying lands, and for fish and game management.
  - (v) Provide criteria for shoreland layout for residential, industrial, and commercial development, and shoreline alteration control.
  - (vi) Provide for building setbacks from the water.
  - (vii) Provide for the prevention of shoreland littering, blight harbor development, and pollution.
  - (viii) Provide for the regulation of mineral exploration and production.
  - (ix) Provide the basis for necessary future legislation pertaining to efficient shoreland management.
- (2) Upon completion of the plan, the department shall hold regional public hearings on the recommendations of the plan. Copies of the plan shall be submitted with the hearing records to the governor and the legislature.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32314 Agreements and contracts.**

Sec. 32314. The department may enter into an agreement or make contracts with the federal government, other state agencies, local units of government, or private agencies for the purposes of making studies and plans for the efficient use, development, preservation, or management of the state's shoreland resources. Any study, plan, or recommendation shall be available to a local unit of government in this state that has shoreland. The recommendations and policies set forth in the studies or plans shall serve as a basis and guideline for establishing zoning ordinances and developing shoreland plans by local units of government and the department.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32315 Money, grants, or grants-in-aid; purpose.**

Sec. 32315. For the purposes of this part, the department may receive, obtain, or accept money, grants, or grants-in-aid for the purpose of research, planning, or management of shoreland.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **PART 325**

#### **GREAT LAKES SUBMERGED LANDS**

#### **324.32501 Additional definitions.**

Sec. 32501. As used in this part:

- (a) "Department" means the department of environmental quality.
- (b) "Director" means the director of the department.
- (c) "Marina purposes" means an operation making use of submerged bottomlands or filled-in bottomlands of the Great Lakes for the purpose of service to boat owners or operators, which operation may restrict or prevent the free public use of the affected bottomlands or filled-in lands.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2003, Act 14, Imd. Eff. June 5, 2003;—Am. 2012, Act 247, Imd. Eff. July 2, 2012.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management  
 Rendered Monday, July 7, 2025

Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32502 Unpatented lake bottomlands and unpatented made lands in Great Lakes; construction of part.**

Sec. 32502. The lands covered and affected by this part are all of the unpatented lake bottomlands and unpatented made lands in the Great Lakes, including the bays and harbors of the Great Lakes, belonging to the state or held in trust by it, including those lands that have been artificially filled in. The waters covered and affected by this part are all of the waters of the Great Lakes within the boundaries of the state. This part shall be construed so as to preserve and protect the interests of the general public in the lands and waters described in this section, to provide for the sale, lease, exchange, or other disposition of unpatented lands and the private or public use of waters over patented and unpatented lands, and to permit the filling in of patented submerged lands whenever it is determined by the department that the private or public use of those lands and waters will not substantially affect the public use of those lands and waters for hunting, fishing, swimming, pleasure boating, or navigation or that the public trust in the state will not be impaired by those agreements for use, sales, lease, or other disposition. The word "land" or "lands" as used in this part refers to the aforesaid described unpatented lake bottomlands and unpatented made lands and patented lands in the Great Lakes and the bays and harbors of the Great Lakes lying below and lakeward of the natural ordinary high-water mark, but this part does not affect property rights secured by virtue of a swamp land grant or rights acquired by accretions occurring through natural means or reliction. For purposes of this part, the ordinary high-water mark shall be at the following elevations above sea level, international Great Lakes datum of 1955: Lake Superior, 601.5 feet; Lakes Michigan and Huron, 579.8 feet; Lake St. Clair, 574.7 feet; and Lake Erie, 571.6 feet.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32503 Agreements pertaining to waters over and filling in of submerged patented lands; lease or deed of unpatented lands; terms, conditions, and requirements; reservation of mineral rights; exception; lease or deed allowing drilling operations for exploration of oil or gas purposes; execution of agreement, lease, or deed with United States.**

Sec. 32503. (1) Except as otherwise provided in this section, the department, after finding that the public trust in the waters will not be impaired or substantially affected, may enter into agreements pertaining to waters over and the filling in of submerged patented lands, or to lease or deed unpatented lands, after approval of the state administrative board. Quitclaim deeds, leases, or agreements covering unpatented lands may be issued or entered into by the department with any person, and shall contain such terms, conditions, and requirements as the department determines to be just and equitable and in conformance with the public trust. The department shall reserve to the state all mineral rights, including, but not limited to, coal, oil, gas, sand, gravel, stone, and other materials or products located or found in those lands, except where lands are occupied or to be occupied for residential purposes at the time of conveyance.

(2) The department shall not enter into a lease or deed that allows drilling operations beneath unpatented lands for the exploration or production of oil or gas.

(3) An agreement, lease, or deed entered into under this part by the department with the United States shall be entered into and executed pursuant to the property rights acquisition act, 1986 PA 201, MCL 3.251 to 3.262.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 148, Imd. Eff. Apr. 5, 2002;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2012, Act 247, Imd. Eff. July 2, 2012.

**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

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**324.32504 Unpatented lake lands and unpatented made lands; application for conveyance; contents; qualifications of applicant; consent; approval; fee.**

Sec. 32504. (1) Application for a deed or lease to unpatented lands or agreement for use of water areas over patented lands shall be on forms provided by the department. An application shall include a surveyed description of the lands or water area applied for, together with a surveyed description of the riparian or littoral property lying adjacent and contiguous to the lands or water area, certified to by a registered land surveyor. The description shall show the location of the water's edge at the time it was prepared and other information that is required by the department. The applicant shall be a riparian or littoral owner or owners of property touching or situated opposite the unpatented land or water area over patented lands applied for or an occupant of that land. The application shall include the names and mailing addresses of all persons in possession or occupancy or having an interest in the adjacent or contiguous riparian or littoral property or having riparian or littoral rights or interests in the lands or water areas applied for, and the application shall be accompanied by the written consent of all persons having an interest in the lands or water areas applied for in the application.

(2) Before an application is acted upon by the department, the applicant shall secure approval of or permission for his or her proposed use of such lands or water area from any federal agency as provided by law, the department with the advice of the Michigan waterways commission, and the legislative body of the local unit or units of government within which such land or water area is or will be included, or to which it is contiguous or adjacent. A deed, lease, or agreement shall not be issued or entered into by the department without such approvals or permission. The department may also require the applicant to furnish an abstract of title and ownership, and a 20-year tax history on the riparian or littoral property that is contiguous or adjacent to the lands or water area applied for, as well as on the lands applied for, if available.

(3) The department shall require the applicant to deposit a fee of not less than \$50.00 for each application filed. The fee shall be deposited with the state treasurer to the credit of the state's general fund. If a deed, lease, or other agreement is approved by the department, the applicant is entitled to credit for the fee against the consideration that is paid for the deed, lease, or other agreement.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.32504a Restoration or maintenance of lighthouse; lease or agreement for use of lands; "approved organization" defined.**

Sec. 32504a. (1) The department may accept an application under this part from an approved organization, whether or not the approved organization is a riparian landowner, and may enter into a lease or agreement for the use of lands described in section 32502 on which a lighthouse is located, including the use of water over those lands immediately adjacent to the lighthouse.

(2) As used in this section, "approved organization" means a lawful nonprofit entity as approved by the department, a local unit of government, a federal or state agency or department, an educational agency, or a community development organization, that is seeking to secure a lease or agreement under this section for the purpose of restoring or maintaining a lighthouse.

**History:** Add. 2002, Act 650, Imd. Eff. Dec. 23, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

**324.32505 Unpatented lake bottomlands and unpatented made lands; consideration for conveyances or lease.**

Sec. 32505. (1) If the department determines that it is in the public interest to grant an applicant a deed or lease to lands or enter into an agreement to allow use and improvements in the waters or to enter into any other agreement in regard thereto, the department shall determine the amount of consideration to be paid to this state by the applicant for the conveyance or lease of unpatented lands.

(2) The department may allow, by lease or agreement, the filling in of patented and unpatented submerged lands and allow permanent improvements and structures after finding that the public trust will not be impaired or substantially injured.

(3) The department may issue deeds or may enter into leases of unpatented lands if the lands have been artificially filled in or are proposed to be changed from the condition that exists on October 14, 1955 by filling, sheet piling, shoring, or by any other means, and the lands are used or to be used or occupied in whole or in part for uses other than existing, lawful riparian or littoral purposes. The consideration to be paid to this

state for the conveyance or lease of unpatented lands by the applicant shall be not less than the fair, cash market value of the lands determined as of the date of the filing of the application, minus any improvements placed on the lands, but the sale price shall not be less than 30% of the value of the land. In determining the fair, cash market value of the lands applied for, the department may consider the fact that the lands are connected with the riparian or littoral property belonging to the applicant, and the uses, including residential and commercial, being made or which can be made of the lands.

(4) Agreements for the lands or water area described in section 32502 may be granted to or entered into with local units of government for public purposes. The agreements may contain terms and conditions considered just and equitable given the public trust involved and may grant permission to fill those lands as necessary.

(5) If unpatented lands have not been filled in or in any way substantially changed from their natural character and the application to acquire or lease those lands is filed for the purpose of flood control, shore erosion control, drainage and sanitation control, or to straighten irregular shore lines, then the consideration to be paid to this state by the applicant shall be the fair, cash value of the land, giving due consideration to its being adjacent to and connected with the riparian or littoral property owned by the applicant.

(6) Leases or agreements covering unpatented lands may be granted or entered into with riparian or littoral proprietors for commercial marina purposes or for marinas operated by persons for consideration and containing terms and conditions considered by the department to be just and equitable. The leases may include either filled or unfilled lake bottomlands, or both. Rental shall commence as of the date of use of the unpatented lands for the marina operations. Dockage and other uses by marinas in waters over patented lands on October 14, 1955 shall be considered to be lawful riparian or littoral use.

(7) The department may enter into a lease with the owner of riparian or littoral property, occupied only for single-family residential purposes, to use the abutting unpatented lake bottomlands and waters over those bottomlands for a private harbor if all of the following conditions are met:

(a) The private harbor was formed by a breakwater erected on unpatented lake bottomlands.

(b) The private harbor is used exclusively for private, noncommercial recreational watercraft.

(c) The full-term of the lease is 50 years consisting of two 25-year terms.

(d) The consideration for the lease is as follows:

(i) For a lease entered into on or after the effective date of the amendatory act that amended this section, a lump-sum payment at the beginning of the first 25-year term of the agreement of 0.5% of twice the current state equalized value of the lessee's upland riparian or littoral property or payment of the lump sum pursuant to a schedule as agreed by the department, and a lump-sum payment at the beginning of the second 25-year term of the agreement of 0.5% of twice the current state equalized value of the lessee's upland riparian or littoral property or payment of the lump sum pursuant to a schedule as agreed by the department.

(ii) Unless otherwise requested by the lessee and agreed to by the department, for a lease entered into prior to the effective date of the amendatory act that amended this section, the department shall credit any lease payment made in 2016 against the future payments owed under the terms of subparagraph (i).

(8) If the department after investigation determines that an applicant to acquire or lease lands has willfully and knowingly filled in or in any way substantially changed the lands with an intent to defraud, or if the applicant has acquired the lands with knowledge of such a fraudulent intent and is not an innocent purchaser, the consideration shall be the fair, cash market value of the land or leasehold. An applicant may request a hearing of a determination made under this subsection. The department shall grant a hearing if requested.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2018, Act 18, Eff. May 14, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32506 Unpatented lands and unpatented made lands; value determination by department; appraisal; decision of court.**

Sec. 32506. The fair, cash market value of lands approved for sale under this part shall be determined by the department. Consideration paid to the state shall not be less than \$50.00. If the applicant is not satisfied with the value determined by the department, within 30 days after the receipt of the determination he or she may submit a petition in writing to the circuit court of the county in which the lands are located, and the court shall appoint an appraiser or appraisers as the court shall determine for an appraisal of the lands. The decision of the court is final.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA



#### **324.32507 Receipts; disposition; accounting; employees.**

Sec. 32507. (1) All money received by the department from the sale, lease, or other disposition of land and water areas under this part shall be forwarded to the state treasurer and be credited to the land and water management permit fee fund created in section 30113.

(2) The department shall comply with the accounting laws of this state and the requirements with respect to submission of budgets. The department may hire employees, assistants, and services that may be necessary within the appropriation made by the legislature and may delegate this authority as may be necessary to implement this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32508 Lands conveyed; taxation.**

Sec. 32508. All lands conveyed or leased under this part are subject to taxation and the general property tax laws and other laws as other real estate used and taxed by the governmental unit or units within which the land is or may be included.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32509 Rules.**

Sec. 32509. The department may promulgate rules, in accordance with the requirements of law, consistent with this part, that may be necessary to implement this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32510 Land filled, excavated, or modified without approval; misdemeanor; penalty; issuance or service of appearance ticket; "minor offense" defined.**

Sec. 32510. (1) Except as provided in subsection (2), a person who excavates or fills or in any manner alters or modifies any of the land or waters subject to this part without the approval of the department is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both. Land altered or modified in violation of this part shall not be sold to any person convicted under this section at less than fair, cash market value.

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

(3) As used in this section, "minor offense" means either of the following violations of this part if the department determines that restoration of the affected property is not required:

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

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

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32511 Certificate of location of lakeward boundary; application; riparian owner; fee.**

Sec. 32511. A riparian owner may apply to the department for a certificate suitable for recording indicating the location of his or her lakeward boundary or indicating that the land involved has accreted to his or her property as a result of natural accretions or placement of a lawful, permanent structure. The application must be accompanied by a fee of \$200.00 and proof of upland ownership.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2018, Act 18, Eff. May 14, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32512 Acts prohibited; exceptions; activities not subject to regulation; applicability of subsection (2) to certain lands.**



Sec. 32512. (1) Except as provided in subsection (2), unless a permit has been granted by the department pursuant to part 13 or authorization has been granted by the legislature, or except as to boat wells and slips facilitating private, noncommercial, recreational boat use, not exceeding 50 feet in length where the spoil is not disposed of below the ordinary high-water mark of the body of water to which it is connected, a person shall not do any of the following:

(a) Construct, dredge, commence, or do any work with respect to an artificial canal, channel, ditch, lagoon, pond, lake, or similar waterway where the purpose is ultimate connection of the waterway with any of the Great Lakes, including Lake St. Clair.

(b) Connect any natural or artificially constructed waterway, canal, channel, ditch, lagoon, pond, lake, or similar waterway with any of the Great Lakes, including Lake St. Clair, for navigation or any other purpose.

(c) Dredge or place spoil or other material on bottomland.

(d) Construct a marina.

(2) Except as provided in subsection (3), 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.

(3) Subsection (2) 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.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2003, Act 14, Imd. Eff. June 5, 2003;—Am. 2012, Act 247, Imd. Eff. July 2, 2012.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32512a Minor project categories; activities; conditions; application; notice; general permit.**

Sec. 32512a. (1) After providing notice and an opportunity for a public hearing, the department shall establish minor project categories of activities that are similar in nature, have minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. The department may act upon an application received pursuant to section 32513 for an activity within a minor project category without providing notice pursuant to section 32514. A minor project category shall not be valid for more than 5 years, but may be reestablished. All other provisions of this part, except provisions applicable only to general permits, are applicable to a minor project.

(2) The department, after notice and opportunity for a public hearing, shall issue general permits on a statewide basis or within a local unit of government for a category of activities if the department determines that the activities are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. A general permit shall be based on the requirements of this part and the rules promulgated under this part, and shall set forth the requirements and standards that shall apply to an activity authorized by the general permit. Before authorizing a specific project to proceed under a general permit, the department may provide notice pursuant to section 32514 but shall not hold a public hearing and shall not typically require a site inspection. A general permit shall not be valid for more than 5 years, but may be reissued.

**History:** Add. 2003, Act 14, Imd. Eff. June 5, 2003;—Am. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2012, Act 247, Imd. Eff. July 2, 2012.

**Compiler's note:** Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32513 Application for permit; contents; fees; disposition of fees.**

Sec. 32513. (1) To obtain a permit for any activity specified in section 32512, a person shall file an

application with the department on a form provided by the department. The application must include all of the following:

- (a) The name and address of the applicant.
  - (b) The legal description of the lands included in the project.
  - (c) A summary statement of the purpose of the project.
  - (d) A map or diagram showing the proposal on an adequate scale with contours and cross-section profiles of any waterway to be constructed.
  - (e) Other information required by the department.
- (2) Except as provided in subsections (3) and (4), until October 1, 2025, an application for a permit under this section must be accompanied by the following fee, as applicable:
- (a) For a project in a category of activities for which a general permit is issued under section 32512a(2), a fee of \$50.00.
  - (b) For activities included in a minor project category established under section 32512a(1), a fee of \$100.00.
  - (c) For construction or expansion of a marina, a fee of:
    - (i) \$50.00 for an expansion of 1-10 marina slips to an existing permitted marina.
    - (ii) \$100.00 for a new marina with 1-10 proposed marina slips.
    - (iii) \$250.00 for an expansion of 11-50 marina slips to an existing permitted marina, plus \$10.00 for each marina slip over 50.
    - (iv) \$500.00 for a new marina with 11-50 proposed marina slips, plus \$10.00 for each marina slip over 50.
    - (v) \$1,500.00 if an existing permitted marina proposes maintenance dredging of 10,000 cubic yards or more, unless the dredge material is determined through testing to be 90% or more sand, or the addition of seawalls, bulkheads, or revetments of 500 feet or more.
  - (d) For major projects other than a project described in subdivision (c)(v), involving any of the following, a fee of \$2,000.00:
    - (i) Dredging of 10,000 cubic yards or more, unless the dredge material is determined through testing to be 90% or more sand.
    - (ii) Filling of 10,000 cubic yards or more.
    - (iii) Seawalls, bulkheads, or revetment of 500 feet or more.
    - (iv) Filling or draining of 1 acre or more of coastal wetland.
    - (v) New dredging or upland boat basin excavation in areas of suspected contamination.
    - (vi) New breakwater or channel jetty.
    - (vii) Shore protection, such as groins and underwater stabilizers, that extend 150 feet or more on Great Lakes bottomlands.
    - (viii) New commercial dock or wharf of 300 feet or more in length.
  - (e) For all other projects not listed in subdivisions (a) to (d), \$500.00.
- (3) A project that requires review and approval under this part and 1 or more of the following is subject to only the single highest permit fee required under this part or the following:
- (a) Section 3104.
  - (b) Part 301.
  - (c) Part 303.
  - (d) Part 323.
  - (e) Section 117 of the land division act, 1967 PA 288, MCL 560.117.
- (4) If work is done in violation of a permit requirement under this part and restoration is not ordered by the department, the department may accept an application for a permit if the application is accompanied by a fee equal to 2 times the permit fee otherwise required under this section.
- (5) The department shall forward fees collected under this section to the state treasurer for deposit into the land and water management permit fee fund created in section 30113.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 170, Imd. Eff. Oct. 9, 1995;—Am. 1999, Act 106, Imd. Eff. July 7, 1999;—Am. 2003, Act 14, Imd. Eff. June 5, 2003;—Am. 2003, Act 163, Imd. Eff. Aug. 12, 2003;—Am. 2008, Act 276, Imd. Eff. Sept. 29, 2008;—Am. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2012, Act 247, Imd. Eff. July 2, 2012;—Am. 2013, Act 11, Imd. Eff. Mar. 27, 2013;—Am. 2013, Act 98, Imd. Eff. July 2, 2013;—Am. 2015, Act 76, Eff. Oct. 1, 2015;—Am. 2019, Act 84, Imd. Eff. Sept. 30, 2019;—Am. 2021, Act 91, Imd. Eff. Oct. 20, 2021.

**Compiler's note:** Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32514 Application for permit; copies to department of community health, local units, and adjacent riparian owners; objections; public hearing; notice; conditional permit; additional conditions.**

Sec. 32514. (1) Upon receipt of the application, the department shall mail copies of the application to the department of community health, the clerks of the county, city, village, and township, and, if one exists, the drain commissioner of the county, in which the project or body of water affected is located, and to the adjacent riparian owners. Along with the application, the department shall include a statement that unless a written objection is filed with the department within 20 days after the mailing of the copies of the application, the department may take action to grant the application. The department may hold a public hearing on the application. If the department holds a public hearing, the department shall provide notice of the public hearing by publication in a newspaper circulated in the county and by mailing copies of the notice to the persons named in this section at least 10 days prior to the date of the public hearing.

(2) Notwithstanding subsection (1), the department may issue a conditional permit before the expiration of the 20-day period if emergency conditions warrant a project to protect property or public health, safety, or welfare. Following the 20-day period and any public hearing that is held, the department shall take into consideration additional information or objections received and may, consistent with this part, place additional conditions on the final permit.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2013, Act 12, Imd. Eff. Mar. 27, 2013.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32515 Artificial waterway; permit; issuance; conditions; maintenance.**

Sec. 32515. If the department finds that the project will not injure the public trust or interest including fish and game habitat, that the project conforms to the requirements of law for sanitation, and that no material injury to the rights of any riparian owners on any body of water affected will result, the department shall issue a permit authorizing enlargement of the waterway affected. The permit shall provide that the artificial waterway shall be a public waterway, except intake or discharge canals or channels on property owned, controlled, and used by a public utility. The existing and future owners of land fronting on the artificial waterway are liable for maintenance of the waterway in accordance with the conditions of the permit.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32515a Dredging or placing dredged spoils on bottomland; permit; conditions.**

Sec. 32515a. A permit under this part to dredge or place dredged spoil on bottomland is subject to all of the following:

(a) The permit shall be valid for a period of 5 years.

(b) During the term of the permit, the department shall not require additional environmental studies or surveys unless an act of God results in significant geological or ecological changes to the permitted area.

(c) The permit shall allow, at the discretion of the applicant, open lake disposal of dredge material that is not contaminated with toxic substances as defined in R 323.1205 of the Michigan administrative code in waters at the 30-meter depth contour or deeper. However, dredge materials shall not be disposed of within a Great Lakes bottomland preserve established under part 761, a permitted submerged log removal area under part 326, or a lake trout or diporeia refuge.

**History:** Add. 2013, Act 87, Imd. Eff. June 28, 2013.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32516 Repealed. 2012, Act 247, Imd. Eff. July 2, 2012.**

**Compiler's note:** The repealed section pertained to identification of Great Lakes and Lake St. Clair shoreline where removal of vegetation is allowed.

## **PART 326**

## GREAT LAKES SUBMERGED LOGS RECOVERY

### **324.32601 Definitions.**

Sec. 32601. As used in this part:

(a) "Bottomlands" means land in the Great Lakes, and bays and harbors of the Great Lakes, lying below and lakeward of the ordinary high-water mark as described in section 32502.

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

(c) "Fair market value" means the price based upon the unique historical and physical properties, including, but not limited to, species, growth rates, volume, and condition of the submerged logs as calculated at dockside following delivery to shore.

(d) "Fund" means the submerged log recovery fund created in section 32610.

(e) "Great Lakes" means Lake Superior, Lake Michigan, Lake Huron, and Lake Erie, and includes Lake St. Clair.

(f) "Ordinary high-water mark" means the elevations described in section 32502. When the soil, configuration of the surface, or vegetation has been altered by human activity, the ordinary high-water mark is located where it would have been if this alteration had not occurred.

(g) "Patented lands" means any bottomlands lying within a specific government grant area, including a private claim patent or federal patent.

(h) "Riparian owner" means a person who owns frontage bordering bottomlands.

(i) "Riparian rights" means those rights that are associated with the ownership of frontage bordering bottomlands, subject to the public trust.

(j) "Submerged log" means a portion of the trunk of a felled tree that has not been further processed for any end use and is located on, in, over, or under bottomlands. Submerged log does not include a portion of a tree that is located in the Great Lakes or on, in, over, or under bottomlands that poses a navigational or safety hazard or is of no or little commercial value.

(k) "Unpatented lands" means all bottomlands except patented lands.

**History:** Add. 2000, Act 278, Imd. Eff. July 10, 2000.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32602 Submerged logs; reservation of ownership rights.**

Sec. 32602. This state reserves to itself title and ownership of all submerged logs lying on or over, embedded in, or buried under unpatented lands.

**History:** Add. 2000, Act 278, Imd. Eff. July 10, 2000.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32603 Removal of submerged logs from bottomlands, patented lands, or underwater preserves; permit.**

Sec. 32603. (1) A person shall not remove submerged logs from bottomlands except as authorized by a permit issued by the department pursuant to part 13.

(2) The department may issue a permit under this part to a person for the removal of submerged logs from patented lands if permission is received from the lawful owner of the patented lands.

(3) A person shall not recover, alter, or destroy abandoned property as defined in part 761 while engaging in submerged log removal operations under a submerged log removal permit issued under this part.

(4) For submerged log recovery in underwater preserves established under part 761, the department shall place reasonable conditions on submerged log removal permits to prevent damage to abandoned watercraft or other features of archaeological, historical, recreational, or environmental significance and to minimize conflicts between recreational activities within the preserve and the submerged log recovery operation.

**History:** Add. 2000, Act 278, Imd. Eff. July 10, 2000;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32604 Application for submerged log removal permit; submission; form; information; time period for submission; disposition of fees.**

Sec. 32604. (1) Applications for submerged log removal permits shall be submitted before February 1 of each calendar year.

(2) An application for a submerged log removal permit shall be submitted in writing on a form provided by

the department and shall include all of the following:

(a) A description of the proposed bottomland log removal area with boundaries delineated by the use of current technology such as a digital global positioning system or other technology approved by the department. The proposed bottomland log removal area shall be a contiguous area of not more than 320 acres. The area proposed shall be square or rectangular in shape, and the length shall not exceed the width by more than a factor of 6.

(b) A description of the methods to be used to raise the submerged logs, the time of year during which submerged logs will be raised, and the procedures to be used for transferring logs to the shore.

(c) Identification of any adverse environmental impacts associated with the proposed submerged log removal method.

(d) Identification of the steps proposed to mitigate any adverse environmental impacts caused by the proposed submerged log removal operation.

(e) Other information that the department considers necessary in evaluating a submerged log removal permit application.

(f) A \$500.00 application fee.

(3) An application for a submerged log removal permit is not complete until all information requested on the application form and any other information requested by the department are received. Within 30 days of its receipt of an application, the department shall notify the applicant in writing if the application is deficient. The applicant shall submit the requested information to the department within 30 days after the date the notice is provided. If the applicant fails to respond within the 30-day period, the department shall deny the submerged log removal permit unless the applicant requests and the department approves an extension of time based upon the applicant's reasonable justification for the extension.

(4) Application fees received under this section shall be forwarded to the state treasurer for deposit into the fund.

**History:** Add. 2000, Act 278, Imd. Eff. July 10, 2000;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32605 Receipt of completed application; review by department; issuance of permit; conditions.**

Sec. 32605. Upon receiving a complete application for a submerged log removal permit, the department shall do both of the following:

(a) Place the application on public notice for a 20-day period for review and comment.

(b) Submit a copy to the department of natural resources and the department of state for their review and comment.

**History:** Add. 2000, Act 278, Imd. Eff. July 10, 2000.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32606 Department review of application; issuance; limitation; time period for making decision; conditions; notification of approval or denial; disposition of fees.**

Sec. 32606. (1) The department shall review each complete application received for a submerged log removal permit and shall not issue a permit unless the department determines both of the following:

(a) That any adverse impacts, including, but not limited to, impacts to the environment, natural resources, riparian rights, and the public trust are minimal and will be mitigated to the extent practicable.

(b) That the proposed activity will not unreasonably affect the public health, safety, and welfare.

(2) The department may determine that certain areas within a proposed bottomland log removal area described in an application for a submerged log removal permit shall not be authorized for submerged log removal based upon adverse impacts, including, but not limited to, adverse impacts to the environment, natural resources, riparian rights, and the public trust.

(3) The department shall make a decision on whether or not to issue a submerged log removal permit under this part within 90 days after the close of the review and comment period under section 32605 or, if a public hearing is held under section 32608, within 90 days after the date of that public hearing.

(4) If the department issues a submerged log removal permit, the department shall condition the permit on compliance with both of the following:

(a) The permittee has provided the department with a \$3,000.00 log recovery fee.

(b) The permittee has provided the department a bond as required in section 32607(7).



(5) The department shall notify the applicant in writing within 10 days after the date the department approves or denies a submerged log removal permit under this section.

(6) The department shall forward log recovery fees received under this subsection to the state treasurer for deposit into the Great Lakes fund created in section 32611.

**History:** Add. 2000, Act 278, Imd. Eff. July 10, 2000;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32607 Submerged log removal permit; overlaps; expiration; transfer; bond; termination; "bond" defined.**

Sec. 32607. (1) The department shall not authorize the same bottomland log removal area in more than 1 submerged log removal permit at any 1 time.

(2) The department may modify the boundaries of a proposed bottomland log removal area in a submerged log removal permit to avoid overlaps with other active submerged log removal permits or adverse impacts, including, but not limited to, impacts to the environment, natural resources, riparian rights, and the public trust.

(3) A submerged log removal plan approved by the department shall be included in each submerged log removal permit.

(4) A submerged log removal permit shall contain terms and conditions that are determined by the department to protect the environment, natural resources, riparian rights, and the public trust.

(5) Each submerged log removal permit shall expire 5 years after the date the permit is issued. However, a submerged log removal permit issued prior to the effective date of the 2011 amendatory act that amended this section expires 5 years after the effective date of the 2011 amendatory act that amended this section. If federal approval is required, an applicant shall notify the department of the date on which the federal government issued its approval for the submerged log removal permit.

(6) A submerged log removal permit issued under this section is not transferrable unless the transfer is approved in writing by the department.

(7) An applicant for a submerged log removal permit shall provide a bond acceptable to the department in the amount of not less than \$10,000.00 or more than \$100,000.00 as required by the department, based upon permit conditions including costs of restoration and payments under section 32609. Except as provided in subsection (8), the term of the bond shall extend for 1 year following the expiration of the submerged log removal permit. The bond shall be provided to the department at least 10 days prior to beginning submerged log removal in a bottomland log removal area. The bond shall ensure compliance with the submerged log removal permit and all required payments under section 32609. If a submerged log removal permit is terminated under subsection (8), the department shall issue a written statement releasing the permittee or bonding company, or both, upon satisfaction of the department as to the compliance of the permittee with the terms and conditions of the permit and satisfaction of all payments as required in section 32609.

(8) A permittee may request, in writing, and the department may grant, termination of a submerged log removal permit prior to the expiration date, including release from quarterly reports and bond requirements.

(9) As used in this section, "bond" means a performance bond from a surety company authorized to transact business in this state or an irrevocable letter of credit, in favor of the department.

**History:** Add. 2000, Act 278, Imd. Eff. July 10, 2000;—Am. 2004, Act 546, Imd. Eff. Jan. 3, 2005;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32608 Application for submerged log removal permit; hearing.**

Sec. 32608. (1) The department may hold a public hearing on an application for a submerged log removal permit if the department desires additional information before making a decision on the permit application, or upon request, if such request is made within the public notice period.

(2) An applicant for a submerged log removal permit or a riparian owner who is aggrieved by an action or inaction of the department under this part may request a formal hearing on the matter, pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, within 60 days of the notice of the department's decision.

**History:** Add. 2000, Act 278, Imd. Eff. July 10, 2000.

**Popular name:** Act 451

**Popular name:** NREPA



**324.32609 Sawlog stumpage value; reservation of payments; "sawlog stumpage value" defined; report and payments due; disposition of payments; overdue payment.**

Sec. 32609. (1) The state reserves a payment of 15% of the sawlog stumpage value of each submerged log that is removed from unpatented lands. As used in this subsection, "sawlog stumpage value" means the price received from recovered submerged logs.

(2) The holder of a submerged log removal permit under this part shall provide the department with a detailed report and all payments due under this section within 30 days after the close of each calendar quarter. The report shall include an accurate scaling at dockside of all submerged logs removed, by species. The permittee shall provide for an independent agent, approved by the department in writing, to conduct the scaling and species determination.

(3) All payments received under this section shall be forwarded to the state treasurer for deposit into the fund.

(4) After a permittee is notified in writing that a payment under this section is overdue, the department may order suspension of the submerged log removal permit until the payment is submitted in full. The permittee shall not resume submerged log removal operations until the department provides written authorization for the operations to resume.

**History:** Add. 2000, Act 278, Imd. Eff. July 10, 2000;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011.

**Popular name:** Act 451

**Popular name:** NREPA

**324.32610 Submerged log recovery fund.**

Sec. 32610. (1) The submerged log recovery 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) Subject to subsection (5), money from the fund shall be used, upon appropriation, for the administrative costs of the department, the department of natural resources, and the department of state in implementing this part.

(5) On December 1, 2001 and on December 1 of each following year, the state treasurer shall transfer the balance of the fund as follows:

(a) Fifty percent to the Great Lakes fund created in section 32611.

(b) Fifty percent to the forest development fund established under section 50507.

**History:** Add. 2000, Act 277, Imd. Eff. July 10, 2000.

**Popular name:** Act 451

**Popular name:** NREPA

**324.32611 Great Lakes fund.**

Sec. 32611. (1) The Great Lakes fund is created within the state treasury.

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

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

(4) The department shall expend money from the Great Lakes fund, upon appropriation, only for environmental projects related to the Great Lakes and areas contiguous to the Great Lakes including, but not limited to, the prevention and management of nonnative species, coastal wetland restoration, contaminated sediment cleanup, and underwater preserve management, and for the administration of this part.

**History:** Add. 2000, Act 277, Imd. Eff. July 10, 2000;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011.

**Popular name:** Act 451

**Popular name:** NREPA

**324.32612 Violation; civil action; remedies; civil fine.**

Sec. 32612. (1) The department may bring a civil action against a person in the circuit court of the county in which a violation occurs or in Ingham county circuit court to do 1 or more of the following:

(a) Enforce compliance with this part and the rules promulgated under this part.

- (b) Restrain a violation of this part or the rules promulgated under this part.
  - (c) Enjoin the further performance of, or order the removal of, any project that is undertaken contrary to this part or the rules promulgated under this part.
  - (d) Enforce a permit issued under this part.
  - (e) Order the restoration of an area affected by a violation of this part or the rules promulgated under this part to its prior condition.
- (2) In an action brought under this section, the circuit court, in addition to any other relief granted, may assess a civil fine of not more than \$5,000.00 per day for each day of violation of this part or the rules promulgated under this part.
- (3) Any civil fine or remedy assessed, sought, or agreed to by the department shall be appropriate to the violation.
- (4) Civil fines recovered under this section shall be forwarded to the state treasurer for deposit into the fund.

**History:** Add. 2000, Act 278, Imd. Eff. July 10, 2000.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32613 Violation as misdemeanor; penalties.**

Sec. 32613. (1) A person who does any of the following is guilty of a misdemeanor punishable by a fine of not more than \$10,000.00 per day for each day of violation:

- (a) Violates this part or a rule promulgated under this part.
  - (b) Violates a permit issued under this part.
  - (c) Makes a false statement, representation, or certification in an application for or with regard to a permit or in a notice or report required by a permit.
  - (d) Renders inaccurate any monitoring device or method required to be maintained by a permit.
- (2) In addition to any other penalty provided in this section, a court shall order a person convicted under this section to return to the state any logs removed from bottomlands in violation of this part or the rules promulgated under this part, or to compensate the state for the full market value of the logs. If the person convicted under this section had been issued a permit under this part, the permit is void as of the date of conviction.

**History:** Add. 2000, Act 278, Imd. Eff. July 10, 2000.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32614 Repealed. 2018, Act 237, Eff. Sept. 25, 2018.**

**Compiler's note:** The repealed section pertained to an annual report on great lakes submerged logs recovery program.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32615 Rules.**

Sec. 32615. The department may promulgate rules to implement this part.

**History:** Add. 2000, Act 278, Imd. Eff. July 10, 2000.

**Popular name:** Act 451

**Popular name:** NREPA

## PART 327 GREAT LAKES PRESERVATION

### **324.32701 Definitions; retention of established baseline capacity.**

Sec. 32701. (1) As used in this part:

- (a) "Adverse resource impact" means any of the following:
  - (i) Until February 1, 2009, decreasing the flow of a river or stream by part of the index flow such that the river's or stream's ability to support characteristic fish populations is functionally impaired.
  - (ii) Beginning February 1, 2009, subject to subparagraph (vi), decreasing the flow of a cold river system by part of the index flow as follows:
    - (A) For a cold stream, the withdrawal will result in a 3% or more reduction in the density of thriving fish populations as determined by the thriving fish curve.
    - (B) For a cold small river, the withdrawal will result in a 1% or more reduction in the density of thriving

fish populations as determined by the thriving fish curve.

(iii) Beginning February 1, 2009, subject to subparagraph (vi), decreasing the flow of a cold-transitional river system by part of the index flow such that the withdrawal will result in a 5% or more reduction in the density of thriving fish populations as determined by the thriving fish curve.

(iv) Beginning February 1, 2009, subject to subparagraph (vi), decreasing the flow of a cool river system by part of the index flow as follows:

(A) For a cool stream, the withdrawal will result in a 10% or more reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(B) For a cool small river, the withdrawal will result in a 15% or more reduction in the density of thriving fish populations as determined by the thriving fish curve.

(C) For a cool large river, the withdrawal will result in a 12% or more reduction in the density of thriving fish populations as determined by the thriving fish curve.

(v) Beginning February 1, 2009, subject to subparagraph (vi), decreasing the flow of a warm river system by part of the index flow as follows:

(A) For a warm stream, the withdrawal will result in a 5% or more reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(B) For a warm small river, the withdrawal will result in a 10% or more reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(C) For a warm large river, the withdrawal will result in a 10% or more reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(vi) Beginning February 1, 2009, decreasing the flow of a stream or river by more than 25% of its index flow.

(vii) Decreasing the level of a lake or pond with a surface area of 5 acres or more through a direct withdrawal from the lake or pond in a manner that would impair or destroy the lake or pond or the uses made of the lake or pond, including the ability of the lake or pond to support characteristic fish populations, or such that the ability of the lake or pond to support characteristic fish populations is functionally impaired. As used in this subparagraph, lake or pond does not include a retention pond or other artificially created surface water body.

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

(c) "Assessment tool" means the water withdrawal assessment tool provided for in section 32706a.

(d) "Baseline capacity", subject to subsection (2), means any of the following, which shall be considered the existing withdrawal approval amount under section 4.12.2 of the compact:

(i) The following applicable withdrawal capacity as reported to the department or the department of agriculture, as appropriate, by the person making the withdrawal in the annual report submitted under section 32707 not later than April 1, 2009 or in the water use conservation plan submitted under section 32708 not later than April 1, 2009:

(A) Unless reported under a different provision of this subparagraph, for a quarry or mine that holds an authorization to discharge under part 31 that includes a discharge volume, the discharge volume stated in that authorization on February 28, 2006.

(B) The system capacity used or developed to make a withdrawal on February 28, 2006, if the system capacity and a description of the system capacity are included in an annual report that is submitted under this part not later than April 1, 2009.

(ii) If the person making the withdrawal does not report under subparagraph (i), the highest annual amount of water withdrawn as reported under this part for calendar year 2002, 2003, 2004, or 2005. However, for a person who is required to report by virtue of the 2008 amendments to section 32705(2)(d), baseline capacity means the person's withdrawal capacity as reported in the April 1, 2009 annual report submitted under section 32707.

(iii) For a community supply, the total designed withdrawal capacity for the community supply under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, on February 28, 2006 as reported to the department in a report submitted not later than April 1, 2009.

(e) "Characteristic fish curve" means a fish functional response curve that describes the abundance of characteristic fish populations in response to reductions in index flow as published in the document entitled "Report to the Michigan Legislature in response to 2006 Public Act 34" by the former groundwater

conservation advisory council dated July 2007, which is incorporated by reference.

(f) "Characteristic fish population" means the fish species, including thriving fish, typically found at relatively high densities in stream reaches having specific drainage area, index flow, and summer temperature characteristics.

(g) "Cold river system" means a stream or small river that has the appropriate summer water temperature that, based on statewide averages, sustains a fish community composed predominantly of cold-water fish species, and where small increases in water temperature will not cause a decline in these populations, as determined by a scientific methodology adopted by order of the commission.

(h) "Cold-transitional river system" means a stream or river that has the appropriate summer water temperature that, based on statewide averages, sustains a fish community composed predominantly of cold-water fish species, and where small increases in water temperature will cause a decline in the proportion of cold-water species, as determined by a scientific methodology adopted by order of the commission.

(i) "Community supply" means that term as it is defined in section 2 of the safe drinking water act, 1976 PA 399, MCL 325.1002.

(j) "Compact" means the Great Lakes-St. Lawrence river basin water resources compact provided for in part 342.

(k) "Consumptive use" means that portion of water withdrawn or withheld from the Great Lakes basin and assumed to be lost or otherwise not returned to the Great Lakes basin due to evaporation, incorporation into products or agricultural products, use as part of the packaging of products or agricultural products, or other processes. Consumptive use includes a withdrawal of waters of the Great Lakes basin that is packaged within the Great Lakes basin in a container of 5.7 gallons (20 liters) or less and is bottled drinking water as defined in the food code, 2005 recommendations of the food and drug administration of the United States public health service.

(l) "Cool river system" means a stream or river that has the appropriate summer water temperature that, based on statewide averages, sustains a fish community composed mostly of warm-water fish species, but also contains some cool-water species or cold-water species, or both, as determined by a scientific methodology adopted by order of the commission.

(m) "Council" means the Great Lakes-St. Lawrence river basin water resources council created in the compact.

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

(o) "Designated trout stream" means a trout stream identified on the document entitled "Designated Trout Streams for the State of Michigan", as issued under order of the director of the department of natural resources, FO-210.04, on October 10, 2003.

(p) "Diversion" means a transfer of water from the Great Lakes basin into another watershed, or from the watershed of 1 of the Great Lakes into that of another by any means of transfer, including, but not limited to, a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, tanker ship, tanker truck, or rail tanker but does not apply to water that is used in the Great Lakes basin or a Great Lake watershed to manufacture or produce a product that is then transferred out of the Great Lakes basin or watershed. Diverted has a corresponding meaning. Diversion includes a transfer of water withdrawn from the waters of the Great Lakes basin that is removed from the Great Lakes basin in a container greater than 5.7 gallons (20 liters). Diversion does not include any of the following:

(i) A consumptive use.

(ii) The supply of vehicles, including vessels and aircraft, whether for the needs of the persons or animals being transported or for ballast or other needs related to the operation of vehicles.

(iii) Use in a noncommercial project on a short-term basis for firefighting, humanitarian, or emergency response purposes.

(iv) A transfer of water from a Great Lake watershed to the watershed of its connecting waterways.

(q) "Environmentally sound and economically feasible water conservation measures" means those measures, methods, technologies, or practices for efficient water use and for reduction of water loss and waste or for reducing a withdrawal, consumptive use, or diversion that meet all of the following:

(i) Are environmentally sound.

(ii) Reflect best practices applicable to the water use sector.

(iii) Are technically feasible and available.

(iv) Are economically feasible and cost-effective based on an analysis that considers direct and avoided economic and environmental costs.

(v) Consider the particular facilities and processes involved, taking into account the environmental impact, the age of equipment and facilities involved, the process employed, energy impacts, and other appropriate factors.

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

(s) "Flow-based safety factor" means a protective measure of the assessment tool that reduces the portion of index flow available for a withdrawal to 1/2 of the index flow for the purpose of minimizing the risk of adverse resource impacts caused by statistical uncertainty.

(t) "Great Lakes" means Lakes Superior, Michigan and Huron, Erie, and Ontario and their connecting waterways including the St. Marys river, Lake St. Clair, the St. Clair river, and the Detroit river. For purposes of this definition, Lakes Huron and Michigan shall be considered a single Great Lake.

(u) "Great Lakes basin" means the watershed of the Great Lakes and the St. Lawrence river.

(v) "Great Lakes charter" means the document establishing the principles for the cooperative management of the Great Lakes water resources, signed by the governors and premiers of the Great Lakes region on February 11, 1985.

(w) "Great Lakes region" means the geographic region composed of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, and Wisconsin, the commonwealth of Pennsylvania, and the provinces of Ontario and Quebec, Canada.

(x) "Index flow" means the 50% exceedance flow for the lowest summer flow month of the flow regime, for the applicable stream reach, as determined over the period of record or extrapolated from analyses of the United States geological survey flow gauges in Michigan. Beginning on October 1, 2008, index flow shall be calculated as of that date.

(y) "Intrabasin transfer" means a diversion of water from the source watershed of a Great Lake prior to its use to the watershed of another Great Lake.

(z) "Lake augmentation well" means a water well used to withdraw groundwater for the purpose of maintaining or raising water levels of an inland lake or stream as defined in section 30101.

(aa) "Large quantity withdrawal" means 1 or more cumulative total withdrawals of over 100,000 gallons of water per day average in any consecutive 30-day period that supply a common distribution system.

(bb) "Large river" means a river with a drainage area of 300 or more square miles.

(cc) "New or increased large quantity withdrawal" means a new water withdrawal of over 100,000 gallons of water per day average in any consecutive 30-day period or an increase of over 100,000 gallons of water per day average in any consecutive 30-day period beyond the baseline capacity of a withdrawal.

(dd) "New or increased withdrawal capacity" means new or additional water withdrawal capacity to supply a common distribution system that is an increase from the person's baseline capacity. New or increased capacity does not include maintenance or replacement of existing withdrawal capacity.

(ee) "Online registration process" means the online registration process provided for in section 32706.

(ff) "Preventative measure" means an action affecting a stream or river that prevents an adverse resource impact by diminishing the effect of a withdrawal on stream or river flow or the temperature regime of the stream or river.

(gg) "Registrant" means a person who has registered a water withdrawal under section 32705.

(hh) "River" means a flowing body of water with a drainage area of 80 or more square miles.

(ii) "Site-specific review" means the department's independent review under section 32706c to determine whether the withdrawal is a zone A, zone B, zone C, or zone D withdrawal and whether a withdrawal is likely to cause an adverse resource impact.

(jj) "Small river" means a river with a drainage area of less than 300 square miles.

(kk) "Source watershed" means the watershed from which a withdrawal originates. If water is withdrawn directly from a Great Lake, then the source watershed shall be considered to be the watershed of that Great Lake and its connecting waterways. If water is withdrawn from the watershed of a direct tributary to a Great Lake, then the source watershed shall be considered to be the watershed of that Great Lake and its connecting waterways, with a preference for returning water to the watershed of the direct tributary from which it was withdrawn.

(ll) "Stream" means a flowing body of water with a drainage area of less than 80 square miles.

(mm) "Stream reach" means a segment of a stream or river.

(nn) "Thriving fish curve" means a fish functional response curve that describes the initial decline in density of thriving fish populations in response to reductions in index flow as published in the document entitled "Report to the Michigan Legislature in response to 2006 Public Act 34" by the former groundwater conservation advisory council dated July 2007, which is incorporated by reference.

(oo) "Thriving fish population" means the fish species that are expected to flourish at very high densities in stream reaches having specific drainage area, index flow, and summer temperature characteristics.

(pp) "Warm river system" means a stream or river that has the appropriate summer water temperature that, based on statewide averages, sustains a fish community composed predominantly of warm-water fish species,



as determined by a scientific methodology adopted by order of the commission.

(qq) "Waters of the Great Lakes basin" means the Great Lakes and all streams, rivers, lakes, connecting channels, and other bodies of water, including groundwater, within the Great Lakes basin.

(rr) "Waters of the state" means groundwater, lakes, rivers, and streams and all other watercourses and waters, including the Great Lakes, within the territorial boundaries of the state. Waters of the state do not include drainage ways and ponds designed and constructed solely for wastewater conveyance, treatment, or control.

(ss) "Withdrawal" means the removal of water from surface water or groundwater.

(tt) "Zone A withdrawal" means the following:

(i) For a cold river system, as follows:

(A) For a cold stream, less than a 1% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(B) For a cold small river, less than 50% of the withdrawal that would result in an adverse resource impact.

(ii) For a cold-transitional river system, there is not a zone A withdrawal.

(iii) For a cool river system, as follows:

(A) For a cool stream, less than a 10% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(B) For a cool small river, less than a 5% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(C) For a cool large river, less than an 8% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(iv) For a warm river system, less than a 10% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(uu) "Zone B withdrawal" means the following:

(i) There is not a zone B withdrawal for a cold stream or small river.

(ii) For a cold-transitional river system, less than a 5% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(iii) For a cool river system, as follows:

(A) For a cool stream, a 10% or more but less than a 20% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(B) For a cool small river, a 5% or more but less than a 10% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(C) For a cool large river, an 8% or more but less than a 10% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(iv) For a warm river system, as follows:

(A) For a warm stream, a 10% or more but less than a 15% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(B) For a warm small river or a warm large river, a 10% or more but less than a 20% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(vv) "Zone C withdrawal" means the following as long as the withdrawal will not decrease the flow of a stream or river by more than 25% of its index flow:

(i) For a cold river system, as follows:

(A) For a cold stream, a 1% or more but less than a 3% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(B) For a cold small river, 50% or more of the withdrawal that would result in an adverse resource impact but less than a 1% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(ii) There is not a zone C withdrawal for a cold-transitional river system.

(iii) For a cool river system, as follows:

(A) For a cool stream, a 20% or more reduction in the density of thriving fish populations as determined by the thriving fish curve but less than a 10% reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(B) For cool small rivers, a 10% or more but less than a 15% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(C) For cool large rivers, a 10% or more but less than a 12% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(iv) For warm river systems, as follows:

(A) For warm streams, a 15% or more reduction in the density of thriving fish populations as determined



by the thriving fish curve but less than a 5% reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(B) For warm small rivers and warm large rivers, a 20% or more reduction in the density of thriving fish populations as determined by the thriving fish curve but less than a 10% reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(ww) "Zone D withdrawal" means, beginning February 1, 2009, a withdrawal that is likely to cause an adverse resource impact.

(2) For purposes of determining baseline capacity, a person who replaces his or her surface water withdrawal capacity with the same amount of groundwater withdrawal capacity from the drainage area of the same stream reach may retain the baseline capacity established under this section.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 434, Imd. Eff. Dec. 2, 1996;—Am. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 179, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32702 Legislative findings and declarations; authority.**

Sec. 32702. (1) The legislature finds and declares that:

(a) A diversion of water out of the basin of the Great Lakes may impair or destroy the Great Lakes. The legislature further finds that a limitation on such diversions is authorized by and is consistent with the mandate of section 52 of article IV of the state constitution of 1963 that the legislature provide for the protection of the air, water, and other natural resources of the state from pollution, impairment, and destruction.

(b) Water use registration and reporting are essential to implementing the principles of the Great Lakes charter and necessary to support the state's opposition to diversion of waters of the Great Lakes basin and to provide a source of information on water use to protect Michigan's rights when proposed water losses affect the level, flow, use, or quality of waters of the Great Lakes basin.

(c) The waters of the state are valuable public natural resources held in trust by the state, and the state has a duty as trustee to manage its waters effectively for the use and enjoyment of present and future residents and for the protection of the environment.

(d) The waters of the Great Lakes basin are a valuable public natural resource, and the states and provinces of the Great Lakes region and Michigan share a common interest in the preservation of that resource.

(e) Any new diversion of waters of the Great Lakes basin for use outside of the Great Lakes basin will have significant economic and environmental impact adversely affecting the use of this resource by the Great Lakes states and Canadian provinces.

(f) The continued availability of water for domestic, municipal, industrial, and agricultural water supplies, navigation, hydroelectric power and energy production, recreation, and the maintenance of fish and wildlife habitat and a balanced ecosystem are vital to the future economic health of the states and provinces of the Great Lakes region.

(g) Future interbasin diversions and consumptive uses of waters of the Great Lakes basin may have significant adverse impacts upon the environment, economy, and welfare of the Great Lakes region and of this state.

(h) The states and provinces of the Great Lakes region have a duty to protect, conserve, and manage their shared water resources for the use and enjoyment of present and future residents.

(i) The waters of the Great Lakes basin are capable of concurrently serving multiple uses, and such multiple uses of water resources for municipal, public, industrial, commercial, agriculture, mining, navigation, energy development and production, recreation, water quality maintenance, and the maintenance of fish and wildlife habitat and a balanced ecosystem and other purposes are encouraged, recognizing that such uses are interdependent and must be balanced.

(j) The waters of the Great Lakes basin are interconnected and part of a single hydrologic system.

(2) The legislature has the authority under sections 51 and 52 of article IV of the state constitution of 1963 to regulate the withdrawal and uses of the waters of the state, including both surface water and groundwater, to promote the public health, safety, and welfare and to protect the natural resources of the state from pollution, impairment, and destruction, subject to constitutional protections against unreasonable or arbitrary governmental action and the taking of property without just compensation. This authority extends to all waters within the territorial boundaries of the state.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 180, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32703 Diversion of waters prohibited.**

Sec. 32703. Subject to section 32704, a diversion of the waters of the state out of the Great Lakes basin is prohibited.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 180, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32703a Diversion; authorization; conditions.**

Sec. 32703a. (1) If the prohibition in section 32703 is determined to be invalid, the waters of the state shall not be diverted unless authorized by law.

(2) When considering whether to grant legislative approval for a diversion, the legislature shall consider sections 51 and 52 of article IV of the state constitution of 1963 and whether the project serves a public purpose, whether the project will result in no material harm to the waters of the state, the public trust, or related purposes, and whether the project would result in any improvement to the waters of the state or the water dependent natural resources of the state.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32704 Applicability of MCL 324.32703.**

Sec. 32704. Section 32703 does not apply to a diversion of the waters of the Great Lakes out of the drainage basin of the Great Lakes existing on September 30, 1985.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32704a Diversion; proposal; comment period; notification; waiver.**

Sec. 32704a. The governor shall establish a public comment period with regard to a proposal subject to 42 USC 1962d-20 to divert waters of the Great Lakes basin outside of the Great Lakes basin and shall notify the standing committees of the legislature with jurisdiction over issues primarily pertaining to natural resources and the environment of his or her receipt of the proposal. The governor may waive the comment period under this section if he or she determines that it is necessary to take immediate action to provide humanitarian relief or firefighting capabilities.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32705 Registration of withdrawal; use of assessment tool; exception; agricultural purpose; form; calculating total amount of existing or proposed withdrawal; aggregate information; duration of valid registration.**

Sec. 32705. (1) Except as otherwise provided in this section, the owner of real property who intends to develop capacity on that property to make a new or increased large quantity withdrawal from the waters of this state shall register the withdrawal with the department after using the assessment tool, if required under this part, and prior to beginning that withdrawal. A registration under this section may be made using the online registration process.

(2) The following persons are not required to register under this section:

(a) Subject to subdivision (c), a person who has previously registered for that property under this part or the owner of real property containing the capacity to make a withdrawal that was previously requested under this part, unless the property owner develops new or increased withdrawal capacity on the property of an additional 100,000 gallons of water per day from the waters of the state.

(b) A community supply required to obtain a permit under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(c) A person required to obtain a permit under section 32723.

(d) The owner of a noncommercial well located on the following residential property:

- (i) Single-family residential property unless that well is a lake augmentation well.
- (ii) Multifamily residential property not exceeding 4 residential units and not more than 3 acres in size unless that well is a lake augmentation well.
- (3) Subsection (1) does not limit a property owner's ability to withdraw water from a test well prior to registration if the test well is constructed in association with the development of new or increased withdrawal capacity and used only to evaluate the development of new or increased withdrawal capacity.
- (4) A registration under this section by the owner of a farm in which the withdrawal is intended for an agricultural purpose, including irrigation for an agricultural purpose, may be submitted to the department of agriculture instead of the department.
- (5) A registration submitted under this section that is not submitted via the online registration process shall be on a form provided by the department or the department of agriculture, as appropriate.
- (6) In calculating the total amount of an existing or proposed withdrawal for the purpose of this section, a person shall combine all separate withdrawals that the person makes or proposes to make, whether or not these withdrawals are for a single purpose or are for related but separate purposes.
- (7) The department shall aggregate information received by the state related to large quantity withdrawal capacities within the state and reported large quantity withdrawals in the state.
- (8) Unless a property owner develops the capacity to make the new or increased large quantity withdrawal within 18 months after the property owner registers under subsection (1), the registration is no longer valid.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2006, Act 35, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 180, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32706 Development of internet-based online registration process; registration; required statement and supporting documentation.**

Sec. 32706. (1) Not later than 1 year after the effective date of the amendatory act that amended this section, the department shall develop and implement an internet-based online registration process that may be used for registrations under section 32705. The online registration process shall be designed to work in conjunction with the assessment tool.

- (2) Each registration under this part shall include both of the following:
  - (a) A statement and supporting documentation that includes all of the following:
    - (i) The place and source of the proposed withdrawal.
    - (ii) The location of any discharge or return flow associated with the proposed withdrawal.
    - (iii) The location and nature of the proposed water use.
    - (iv) The capacity of the equipment used for making the proposed withdrawal.
    - (v) The estimated average annual and monthly volumes and rate of the proposed withdrawal.
    - (vi) The estimated average annual and monthly volumes and rates of consumptive use from the proposed withdrawal.
  - (b) Beginning 1 year after the effective date of the amendatory act that added this subdivision, for a new or increased large quantity withdrawal from a stream or river or groundwater, the determination from the use of the assessment tool under section 32706b or the determination from a site-specific review, as appropriate.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 434, Imd. Eff. Dec. 2, 1996;—Am. 2008, Act 180, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32706a Internet-based water withdrawal assessment tool; implementation; determination of proposed zone withdrawal; entering and printing data; working in conjunction with online registration process; technical modifications; redesignation of stream or river; report.**

Sec. 32706a. (1) On October 1, 2008, the department shall make available for testing and evaluation an internet-based water withdrawal assessment tool based upon the recommendations of the former groundwater conservation advisory council and the requirements of this part. The assessment tool shall contain a flow-based safety factor. Beginning 1 year after the effective date of the amendatory act that added this section, the department shall implement the assessment tool.

- (2) The assessment tool shall determine whether a proposed withdrawal is a zone A, zone B, zone C, or zone D withdrawal and whether a proposed withdrawal is likely to cause an adverse resource impact based

upon whether the proposed withdrawal is from a cold river system, a cold-transitional river system, a cool river system, or a warm river system. The assessment tool shall account for impacts due to cumulative withdrawals as provided for in section 32706e. The assessment tool shall also distinguish the impact of a proposed withdrawal based upon whether the proposed withdrawal is from a stream, a small river, or a large river, subject to the following:

(a) Cool streams and warm streams with less than 3 square miles of drainage area shall be integrated into the next largest drainage area for purposes of assessment tool determinations.

(b) Cool streams and warm streams with less than 20 square miles of drainage area and less than 1 cubic foot per second of index flow shall be integrated into the next largest drainage area for purposes of assessment tool determinations.

(c) Cool streams and warm streams with a drainage area of more than 3 square miles but less than 6 square miles shall be integrated into the next largest drainage area for purposes of assessment tool determinations for groundwater withdrawals.

(3) The assessment tool shall allow the user to enter into fields the following data related to a proposed withdrawal:

(a) The capacity of the equipment used for making the withdrawal.

(b) The location of the withdrawal.

(c) The withdrawal source, whether surface water or groundwater.

(d) If the source of the withdrawal is groundwater, whether the source of the withdrawal is a glacial stratum or bedrock.

(e) The depth of the withdrawal if from groundwater.

(f) The amount and rate of water to be withdrawn.

(g) Whether the withdrawal will be intermittent.

(4) The assessment tool shall contain a print function that allows the user, upon receipt of the assessment tool's determination, to print the data submitted and the determination returned along with a date and time.

(5) The assessment tool shall work in conjunction with the online registration process and shall also allow operation independent of the online registration process.

(6) On an ongoing basis, the department shall add verified data to the assessment tool's database from reports submitted under sections 32707, water use conservation plans submitted under section 32708, and permits issued under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, and other sources of data regarding the waters of the state. Additionally, the department shall make technical modifications to the assessment tool related to considerations of temperature, hydrology, and stream or river flow based upon a scientific methodology adopted by order of the commission.

(7) If a person disagrees with the designation of a particular stream or river as a cold river system, a cold-transitional river system, a cool river system, or a warm river system for use in the assessment tool or otherwise under this part, the person may petition for a redesignation of that stream or river. The petition shall be submitted to the commission for its review and determination.

(8) The department shall report annually to the standing committees of the legislature with jurisdiction primarily pertaining to natural resources and the environment on the implementation of the assessment tool and this part. This report shall include, but is not limited to, all of the following:

(a) The number of zone C withdrawal site-specific reviews requested by applicants each 12 months after the effective date of the implementation of the assessment tool under section 32706a.

(b) The number of zone C withdrawal site-specific review determinations that resulted in changes from zone C to zone B and the number of changes from zone C to zone A.

(c) The number of zone C withdrawal site-specific review determinations that result in a zone D withdrawal determination.

(d) The number of site-specific review determinations where the department failed to meet statutory timelines.

(e) The number of registered assessment tool determinations for each zone.

(f) The number of voluntary requests for site-specific reviews that were submitted to the department and whether the department failed to meet statutory timelines on these site-specific reviews.

(g) The number of registrations submitted to the department under this part.

**History:** Add. 2008, Act 185, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32706b Utilization of assessment tool; request for site-specific review; designation of proposed withdrawal; registration; rerun of assessment tool; correction of data.**

Sec. 32706b. (1) Beginning on the effective date of the implementation of the assessment tool under section 32706a, prior to registering a new or increased large quantity withdrawal under section 32705 for a proposed withdrawal from a stream or river, or from groundwater, the property owner proposing to make the withdrawal shall utilize the assessment tool by entering the data related to the proposed withdrawal into the assessment tool. However, a person who intends to make a new or increased large quantity withdrawal for the purpose of dewatering a mine that has a permit under part 31 and is not regulated under part 631, 632, or 637 may choose to submit a request for a site-specific review rather than utilize the assessment tool.

(2) Upon entry of the relevant data under subsection (1), the assessment tool shall indicate to the user whether or not the proposed withdrawal is likely to cause an adverse resource impact and whether the proposed withdrawal falls into the category of zone A, zone B, zone C, or zone D.

(3) If the assessment tool designates a proposed withdrawal as a zone A withdrawal, or a zone B withdrawal in a cool river system or a warm river system, the property owner may register the withdrawal and proceed to make the withdrawal.

(4) If the assessment tool designates a proposed withdrawal as a zone B withdrawal in a cold-transitional river system, or a zone C or zone D withdrawal, the property owner shall not register the withdrawal or make the withdrawal except in accordance with section 32706c.

(5) After a property owner registers a withdrawal, if, in developing the capacity to make the withdrawal, the conditions of the withdrawal deviate from the specific data that were entered into the assessment tool, the property owner shall rerun the assessment tool and shall enter the corrected data into the assessment tool. The property owner shall notify the department of the corrected data and the corrected results from the assessment tool. If the corrected data do not change the determination of the assessment tool, the property owner may proceed with the withdrawal. If the corrected data change the determination from the assessment tool, the property owner shall proceed under the provisions of this part related to the corrected assessment tool determination.

**History:** Add. 2008, Act 185, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

**324.32706c Request for site-specific review; analysis; supporting evidence; conditions; form; information to be included; completion of review by department; withdrawals; registration; corrected data; disclosure under freedom of information act; definitions.**

Sec. 32706c. (1) If the assessment tool determines that a proposed withdrawal with a capacity of 1,000,000 gallons of water or less per day from the waters of the state to supply a common distribution system is a zone B withdrawal in a cold-transitional river system, or a zone C or zone D withdrawal, the property owner may submit to the department the information described in section 32706a(3) and either of the following:

(a) An analysis of the proposed withdrawal by a professional hydrologist or hydrogeologist calculating the streamflow depletion of the proposed withdrawal. The analysis shall be based on an aquifer performance test, streamflow depletion calculations, and geological data consisting of at least 1 of the following, which shall be included with the analysis:

(i) Evidence the proposed withdrawal is in the water management unit or units that were part of a regional or watershed based study of water use impacts accepted by the department under this part. The evidence must include an affidavit by the property owner that the proposed withdrawal is located in a river system and aquifer included in the study, and records of applicable data collected in the study.

(ii) A hydrogeologic analysis of the water management unit or units that will potentially be affected by the proposed withdrawal, incorporating data from well logs, gamma ray logs, surficial maps of the glacial geology, geologic cross sections, and any other available hydrogeologic data.

(b) An analysis by a professional hydrologist or hydrogeologist of a proposed withdrawal from an aquifer separated from streams by bedrock, calculating streamflow depletion of the proposed withdrawal as described in this subdivision by providing hydrogeologic data demonstrating the bedrock transmissivity for the formation or relying on published estimates of transmissivity for the bedrock formation.

(2) Within 20 working days after the department's actual receipt of the analysis and supporting evidence and data related to the proposed withdrawal under subsection (1), the department shall determine whether a proposed withdrawal is a zone A, zone B, zone C, or zone D withdrawal and shall provide to the property owner written notification of its determination. However, if upon a preliminary review of the analysis and supporting evidence and data the department determines that the proposed withdrawal will cause a rejection only under subdivision (d)(iv), the department may, within the first 20 working days after actual receipt of the analysis and supporting evidence and data related to the proposed withdrawal under subsection (1), provide



written notification to the property owner that up to 5 additional working days are needed for confirmation. If the department does not provide written notification stating a need for up to 5 additional working days or if the department cites any other reason under subdivision (d) for rejection, it must make its determination and provide to the property owner written notification of its determination within 20 working days after actual receipt of the analysis and supporting evidence and data related to the proposed withdrawal under subsection (1). The department's determination is subject to the following:

(a) If the department fails to provide written notification to the property owner within the time period required under this subsection, the property owner may register the withdrawal and proceed with the withdrawal.

(b) If the department determines that the proposed withdrawal is a zone A or a zone B withdrawal, the property owner may register the withdrawal and may proceed with the withdrawal.

(c) If the department determines that the proposed withdrawal is a zone C withdrawal, the property owner may register the withdrawal and proceed to make the withdrawal if the property owner self-certifies that he or she is implementing applicable environmentally sound and economically feasible water conservation measures prepared under section 32708a that the property owner considers to be reasonable or has self-certified that he or she is implementing applicable environmentally sound and economically feasible water conservation measures developed for the water use associated with that specific withdrawal that the property owner considers to be reasonable. A property owner proceeding under this subdivision shall provide 5 sets of water level recovery measurements, as described in an aquifer performance test, taken after pumping between June and October within 2 years after the production well is put in service. The department shall not require submission of additional information or data from a property owner proceeding under this subdivision.

(d) If the department determines that the proposed withdrawal is a zone D withdrawal, the property owner shall not register the withdrawal and shall not make the withdrawal unless the property owner applies for a water withdrawal permit under section 32723 and the withdrawal is authorized under that section, or unless it is authorized under subsection (4). In addition to the written notification of its determination under this subsection, if the department determines that the proposed withdrawal is a zone D withdrawal, the department shall include documentation demonstrating that the proposed water withdrawal is likely to cause an adverse resource impact. The documentation shall include 1 or more of the following:

(i) Identification of specific errors in data collection performed by the professional hydrologist or hydrogeologist that render the analysis of the proposed withdrawal invalid.

(ii) A statement that the professional hydrologist or hydrogeologist used an inapplicable model to analyze the proposed withdrawal, with an explanation including both why the model selected for analysis was inapplicable for the proposed withdrawal and an analysis using an applicable model that shows the proposed withdrawal is likely to cause an adverse resource impact.

(iii) Identification of specific errors in the model analysis performed by the professional hydrologist or hydrogeologist that render the analysis of the proposed withdrawal invalid.

(iv) The cumulative streamflow depletion estimated for all the registered water withdrawals in an impacted watershed management area is likely to cause an adverse resource impact. The cumulative streamflow depletion calculation shall account for reevaluation of previously registered water withdrawals in the affected water management units using the Hunt, 2003; Ward and Lough, 2011; or a similar peer-reviewed model that assesses potential stream depletion.

(3) After a property owner registers a withdrawal pursuant to subsection (2), if, in developing the capacity to make the withdrawal, the conditions of the withdrawal deviate from the specific data that were evaluated, the property owner shall notify the department of the corrected data and the department shall confirm its determination under subsection (2). If the corrected data do not change the determination, the property owner may proceed with the withdrawal. If the corrected data change the determination, the property owner shall proceed under the provisions of this part related to the corrected determination.

(4) If a proposed withdrawal is a zone B withdrawal in a cold-transitional river system, or a zone C or zone D withdrawal, and a property owner does not submit any of the information described in subsection (1) or the department determines under subsection (2) that the proposed withdrawal is a zone D withdrawal, the property owner may request a site-specific review. A request for a site-specific review shall be submitted to the department in a form required by the department and shall include all of the following:

(a) The information described in section 32706a(3).

(b) The intended maximum monthly and annual volumes and rates of the proposed withdrawal, if different from the capacity of the equipment used for making the proposed withdrawal.

(c) If the amount and rate of the proposed withdrawal will have seasonal fluctuations, the relevant information related to the seasonal use of the proposed withdrawal.

(d) A description of how the water will be used and the location, amount, and rate of any return flow.



(e) Any other information the property owner would like the department to consider in making its determination under this section.

(5) Upon receipt of a request for a site-specific review under subsection (4), the department shall consider the information submitted and shall consider the actual stream or river flow data of any affected stream reach. The department shall also apply the drainage area integration standards provided in section 32706a(2)(a), (b), and (c), if applicable, and account for cumulative withdrawals as provided for in section 32706e. The department shall not rely on the assessment tool's determination in making its determination under a site-specific review. The department may calculate streamflow depletion using Hunt, 2003; Ward and Lough, 2011; or a similar peer-reviewed model that assesses potential stream depletion. The calculation of streamflow depletion may also be conducted on existing withdrawals in the same water management unit or units as the proposed withdrawal if applicable data are available. This data may be used to provide additional evidence as needed to demonstrate whether a proposed withdrawal is likely to cause an adverse resource impact.

(6) The department shall complete a site-specific review within 10 working days of submittal of a request for a site-specific review. If the department determines, based upon a site-specific review, that the proposed withdrawal is a zone A or a zone B withdrawal, the department shall provide written notification to the property owner and the property owner may register the withdrawal and may proceed with the withdrawal.

(7) Subject to subsection (8), if the department determines in conducting a site-specific review that the proposed withdrawal is a zone C withdrawal, the property owner may register the withdrawal and proceed to make the withdrawal if the property owner self-certifies that he or she is implementing applicable environmentally sound and economically feasible water conservation measures prepared under section 32708a that the property owner considers to be reasonable or has self-certified that he or she is implementing applicable environmentally sound and economically feasible water conservation measures developed for the water use associated with that specific withdrawal that the property owner considers to be reasonable.

(8) Except for withdrawals exempt from obtaining a water withdrawal permit under section 32723, if a site-specific review determines that a proposed withdrawal is a zone C withdrawal with capacity in excess of 1,000,000 gallons of water per day from the waters of the state to supply a common distribution system, the person proposing the withdrawal shall not register the withdrawal and shall not proceed with making the withdrawal unless the person obtains a water withdrawal permit under section 32723.

(9) If the department determines, based upon a site-specific review, that the proposed withdrawal is a zone D withdrawal, the property owner shall not register the withdrawal and shall not make the withdrawal unless he or she applies for a water withdrawal permit under section 32723 and the withdrawal is authorized under that section.

(10) After a property owner registers a withdrawal following a site-specific review, if, in developing the capacity to make the withdrawal, the conditions of the withdrawal deviate from the specific data that were evaluated in the site-specific review, the property owner shall notify the department of the corrected data and the department shall confirm its determination under the site-specific review. If the corrected data do not change the determination under the site-specific review, the property owner may proceed with the withdrawal. If the corrected data change the determination under the site-specific review, the property owner shall proceed under the provisions of this part related to the corrected determination.

(11) Nothing in this section alters any requirement to disclose information or any exemption from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, as otherwise provided under sections 32707(6) and 32708(4).

(12) As used in this part:

(a) "Aquifer performance test" means a controlled field test in which all of the following are done:

(i) At least 1 monitoring well is installed. The monitoring well must be installed in the same aquifer and screened at or near the same depth as the production well, and be located at a distance of 1 to 5 times the thickness of the aquifer from the proposed production well. A nearby existing well may be used as a monitoring well for the test instead if it meets all the monitoring well requirements.

(ii) Static water level elevation measurements are taken at 1-minute intervals for 24 hours before the pumping portion of the test to an accuracy of 0.05 feet.

(iii) Pumping is conducted at a rate at or above the desired production rate for the duration of the test and metered or periodically measured to ensure consistency of rate.

(iv) The pumping portion of the test is conducted for a period of 24 hours in confined aquifers or 72 hours in unconfined aquifers, during which drawdown measurements are taken at 1-minute intervals to an accuracy of 0.05 feet.

(v) After completion of the pumping period, measurements of water level recovery are taken at 1-minute intervals for 24 hours to an accuracy of 0.05 feet.

(vi) An analysis is conducted to determine, at a minimum, the aquifer hydraulic characteristics of transmissivity and storage coefficient employing the methods of Cooper and Jacob, 1946; Theis, 1935; Hantush and Jacob, 1955; Hantush and Jacob, 1960; Hantush and Jacob, 1961; Neuman, 1972; Neuman, 1974; or Hunt and Scott, 2007.

(b) "Cooper and Jacob, 1946" means Cooper and Jacob, 1946: "A Generalized Graphical Method for Evaluating Formation Constants and Summarizing Well-Field History".

(c) "Hantush and Jacob, 1955" means Hantush and Jacob, 1955: "Non-Steady Radial Flow in an Infinite Leaky Aquifer".

(d) "Hantush and Jacob, 1960" means Hantush and Jacob, 1960: "Modification of the Theory of Leaky Aquifers".

(e) "Hantush and Jacob, 1961" means Hantush and Jacob, 1961: "Aquifer Tests on Partially Penetrating Wells".

(f) "Hunt, 1999" means Hunt, 1999: "Unsteady Stream Depletion from Ground Water Pumping".

(g) "Hunt, 2003" means Hunt, 2003: "Unsteady Stream Depletion When Pumping from Semiconfined Aquifer".

(h) "Hunt and Scott, 2007" means Hunt and Scott, 2007: "Flow to a Well in a Two-Aquifer System".

(i) "Neuman, 1972" means Neuman, 1972: "Theory of Flow in Unconfined Aquifers Considering Delayed Gravity Response of the Water Table".

(j) "Neuman, 1974" means Neuman, 1974: "Effect of Partial Penetration on Flow in Unconfined Aquifers Considering Delayed Gravity Response".

(k) "Professional hydrologist or hydrogeologist" means an individual holding a license or registration from any state as a professional hydrologist, hydrogeologist, or geologist, or a current certification as a professional geologist by the American Institute of Professional Geology.

(l) "Streamflow depletion calculation" means an evaluation of the potential streamflow depletion in which all of the following are done:

(i) The streambed conductance of the potentially impacted streams shall be measured in-situ using slug testing, seepage meter testing, or both.

(ii) An aquifer performance test representing the proposed withdrawal location has been completed.

(iii) An analysis shall be conducted to calculate streamflow depletion using the applicable method of Hunt, 1999; Hunt, 2003; Ward and Lough, 2011; or a similar peer-reviewed model that assesses potential stream depletion. The analysis may also be conducted on existing withdrawals in the same water management unit or units as the proposed withdrawal if applicable data are available. This may be used to provide additional evidence as needed to demonstrate a proposed withdrawal is unlikely to cause an adverse resource impact.

(m) "Theis, 1935" means Theis, 1935: "The Relation Between the Lowering of the Piezometric Surface and the Rate and Duration of Discharge of a Well Using Groundwater Storage".

(n) "Ward and Lough, 2011" means Ward and Lough, 2011: "Stream Depletion from Pumping a Semiconfined Aquifer in a Two-Layer Leaky Aquifer System".

**History:** Add. 2008, Act 181, Imd. Eff. July 9, 2008;—Am. 2018, Act 209, Eff. June 22, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32706d Collection of stream or river flow measurements by persons other than department; development and use of protocol; training program.**

Sec. 32706d. (1) The department shall develop a protocol for the collection of stream or river flow measurements by persons other than the department for use by the department in the administration of this part. The protocol may specify a minimum number of measurements, stream or river flow and weather conditions when the measurements are to be made, and any other conditions necessary to ensure the adequacy and quality of the measurements. The protocol shall ensure that stream or river flow measurements collected for this purpose meet the same data quality standards as stream or river flow measurements collected by the United States geological survey. The department shall consult with the United States geological survey and other recognized scientific experts in developing this protocol.

(2) The department may use stream or river flow data collected using the protocol under subsection (1) in conducting site-specific reviews, in making water withdrawal permit decisions under section 32723, in issuing permits under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, in updating the water withdrawal assessment tool as appropriate, or in other actions requiring an evaluation of stream or river flow.

(3) The department may establish a program to train and certify individuals in the collection of stream or river flow measurements. The department shall charge a fee sufficient to reimburse the department for the

cost of a program developed under this subsection. The department may enter into a cooperative agreement with the United States geological survey to provide training and certification under this section.

**History:** Add. 2008, Act 181, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32706e Cumulative withdrawals; determination of adverse impact.**

Sec. 32706e. The department shall determine whether an adverse resource impact has occurred under this part and whether a withdrawal is a zone A, a zone B, a zone C, or a zone D withdrawal under this part based upon cumulative withdrawals affecting the same stream reach. In accounting for these cumulative withdrawals, the department shall apply both of the following:

(a) Beginning on October 1, 2008, the department shall begin water withdrawal accounting for cumulative withdrawals affecting the same stream reach.

(b) Beginning on February 1, 2009, the department shall adjust the water withdrawal accounting under subdivision (a) such that if cumulative withdrawals beginning on October 1, 2008 have removed a sufficient flow of water from a stream reach to change the zone classification of that stream reach, the department shall reset the water withdrawal accounting benchmark for that stream reach as follows:

(i) If the cumulative impact of withdrawals on February 1, 2009 results in a classification as a zone B withdrawal, the accounting benchmark shall be reset at the beginning point for zone B withdrawals.

(ii) If the cumulative impact of withdrawals on February 1, 2009 results in a classification as a zone C withdrawal, the accounting benchmark shall be reset at the beginning point for zone C withdrawals.

(iii) If the cumulative impact of withdrawals on February 1, 2009 results in a classification as a zone D withdrawal, the accounting benchmark shall be reset at the beginning point for zone C withdrawals. If there is not a zone C for the classification of the stream reach, the water withdrawal accounting benchmark shall be reset at the beginning point for zone B withdrawals.

**History:** Add. 2008, Act 185, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32707 Reporting requirements; forms; water use reporting fees.**

Sec. 32707. (1) Except as provided in subsections (2) and (3), a person who is required to register under section 32705 or holds a permit under section 32723 shall file a report annually with the department on a form provided by the department. Reports shall be submitted by April 1 of each year. Except as provided in subsection (8), reports shall include the following information:

(a) The amount and rate of water withdrawn on an annual and monthly basis.

(b) The source or sources of the water supply.

(c) The use or uses of the water withdrawn.

(d) The amount of consumptive use of water withdrawn.

(e) If the source of the water withdrawn is groundwater, the location of the well or wells in latitude and longitude, with the accuracy of the reported location data to within 25 feet.

(f) If the source of water withdrawn is groundwater, the static water level of the aquifer or aquifers, if practicable.

(g) Other information specified by rule of the department.

(h) At the discretion of the registrant or permit holder, the baseline capacity of the withdrawal and, if applicable, a description of the system capacity.

(i) At the discretion of the registrant or permit holder, the amount of water returned to the source watershed.

(j) Beginning in 2010, an acknowledgment that the registrant has reviewed applicable environmentally sound and economically feasible water conservation measures prepared under section 32708a.

(2) If a person reports the information required by this section to the department in conjunction with a permit or for any other purpose, that reporting, upon approval of the department, satisfies the reporting requirements of this section.

(3) The owner of a farm who reports water use under section 32708 is not required to report under subsection (1).

(4) The department may, upon request from a person required to report under this section, accept a formula or model that provides to the department's satisfaction the information required in subsection (1).

(5) The department shall develop forms for reporting under this section that minimize paperwork and allow for a notification to the department instead of a report if the annual amount of water withdrawn by a person

required to report under this section is within 4% of the amount last reported and the other information required in subsection (1) has not changed since the last year in which a report was filed.

(6) Information described in section 32701(d)(i)(B) that is provided to the department under subsection (1)(h) is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed unless the department determines that the withdrawal is causing an adverse resource impact.

(7) Except as otherwise provided in this subsection, a person who files an annual report or notification under this section shall annually remit a water use reporting fee of \$200.00 to the department. Water use reporting fees shall be remitted to the department in conjunction with the annual report or notification submitted under this section. The department shall transmit water use reporting fees collected under this section to the state treasurer to be credited to the water use protection fund created in section 32714. A water use reporting fee is not required for a report or notification related to a farm that reports withdrawals under section 32708 or for a report under subsection (8).

(8) A person who withdraws less than 1,500,000 gallons of water in any year shall indicate this fact on the reporting form and is not required to provide information under subsection (1)(a) or (d). A person who withdraws less than 1,500,000 gallons of water in any year is not required to pay the water use reporting fee under subsection (7).

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 434, Imd. Eff. Dec. 2, 1996;—Am. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 182, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32708 Water use conservation plan; formula or model to estimate consumptive use of withdrawals for agricultural purposes; inclusion of information in statewide groundwater inventory and map; disclosure.**

Sec. 32708. (1) The owner of a farm that is registered under this part who makes a withdrawal for an agricultural purpose, including irrigation for an agricultural purpose, may report the water use on the farm by annually submitting to the department of agriculture a water use conservation plan. Conservation plans shall be submitted by April 1 of each year. The water use conservation plan shall include, but need not be limited to, all of the following information:

(a) The amount and rate of water withdrawn on an annual and monthly basis in either gallons or acre inches.

(b) The type of crop irrigated, if applicable.

(c) The acreage of each irrigated crop, if applicable.

(d) The source or sources of the water supply.

(e) If the source of the water withdrawn is groundwater, the location of the well or wells in latitude and longitude, with the accuracy of the reported location data to within 25 feet.

(f) If the water withdrawn is not used entirely for irrigation, the use or uses of the water withdrawn.

(g) If the source of water withdrawn is groundwater, the static water level of the aquifer or aquifers, if practicable.

(h) Applicable water conservation practices and an implementation plan for those practices. Beginning in 2010, the water use conservation plan shall include an acknowledgment that the owner of the farm has reviewed applicable environmentally sound and economically feasible water conservation measures prepared under section 32708a.

(i) At the discretion of the registrant, the baseline capacity of the withdrawal based upon system capacity and a description of the system capacity.

(2) The department and the department of agriculture in consultation with Michigan state university shall validate and use a formula or model to estimate the consumptive use of withdrawals made for agricultural purposes consistent with the objectives of section 32707.

(3) Subject to subsection (4), information provided to the department of agriculture under subsection (1)(a), (d), and (e) shall be forwarded to the department for inclusion in the statewide groundwater inventory and map prepared under section 32802.

(4) Information provided under subsection (1)(a), (e), and (i) is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed by the department, the department of agriculture, or the department of natural resources unless the department determines that the withdrawal is causing an adverse resource impact.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 434, Imd. Eff. Dec. 2, 1996;—Am. 2003, Act 148, Imd. Eff.

Aug. 8, 2003;—Am. 2006, Act 35, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 182, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

**324.32708a Generic water conservation measures; preparation; posting on website; submission of water conservation measures by water user's sector; acceptance by department; water conservation measures for agricultural purposes; report; notification of zone C withdrawal; definitions.**

Sec. 32708a.

(1) Not later than March 31, 2009, the department shall prepare, based upon recommendations from representative trade associations, a set of generic water conservation measures that are applicable to all persons making large quantity withdrawals. The department shall post these generic water conservation measures on its website.

(2) Subject to subsection (3), each water user's sector may prepare and submit to the department water conservation measures that are applicable for water users within its sector. Upon receipt of water conservation measures from a water user's sector, the department shall review the water conservation measures, and, if the department determines that those water conservation measures are appropriate for that sector, the department shall accept those water conservation measures. Upon acceptance, the department shall post the water conservation measures on its website and those water conservation measures shall supersede the generic water conservation measures prepared under subsection (1) for water users within that sector. If the department determines that the water conservation measures are not appropriate for the water user's sector, the department shall provide comments to the water user's sector and suggestions that would result in the department's acceptance of the water conservation measures. A water user's sector may resubmit water conservation measures in response to the department's comments and suggestions.

(3) Water conservation measures for agricultural purposes shall be developed and approved by the commission of agriculture and shall be updated annually as part of the process for review and update of generally accepted agricultural and management practices under the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474. Water conservation measures approved under this subsection shall be posted on the department of agriculture's website and shall be forwarded to the department for posting on its website.

(4) By April 1, 2010, the department shall report to the standing committees of the legislature with jurisdiction primarily related to natural resources and the environment on the status of the preparation and acceptance of water user sector conservation measures.

(5) If the department receives a registration for a zone C withdrawal, the department shall notify all other registrants and permit holders whose withdrawals are from the same water source as the zone C withdrawal of the status of the water source. Upon receipt of notification under this subsection, each of these registrants and permit holders shall review and consider implementing the applicable water conservation measures prepared under this section.

(6) Compliance with water conservation measures does not authorize a water withdrawal that is otherwise prohibited by law.

(7) As used in this section:

(a) "Permit holders" means persons holding a permit under section 32723 and persons holding a permit under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(b) "Water conservation measures" means environmentally sound and economically feasible water conservation measures.

**History:** Add. 2006, Act 35, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 182, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

**324.32709 Informational materials.**

Sec. 32709. The department may contract for the preparation and distribution of informational materials to members of the public related to any of the following:

(a) The purposes, benefits, and requirements of this part.

(b) Information on complying with the registration requirement of this part and on any general or applicable methods for calculating or estimating water withdrawals or consumptive uses.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2008, Act 182, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA



**324.32710 Duties of department; electronic mail notification of withdrawals; formation of water resources assessment and education committee.**

Sec. 32710. (1) The department shall do all of the following:

(a) Cooperate with the states and provinces in the Great Lakes region to develop and maintain a common base of information on the use and management of the water of the Great Lakes basin and to establish systematic arrangements for the exchange of this information.

(b) Collect and maintain information regarding the locations, types, and quantities of water use, including water withdrawals and consumptive uses, in a form that the department determines is comparable to the form used by other states and provinces in the Great Lakes region.

(c) Collect, maintain, and exchange information on current and projected future water needs with the other states and provinces in the Great Lakes region.

(d) Cooperate with other states and provinces in the Great Lakes region in developing a long-range plan for developing, conserving, and managing the water of the Great Lakes basin.

(e) Participate in the development of a regional consultation procedure for use in exchanging information on the effects of proposed water withdrawals and consumptive uses from the Great Lakes basin.

(f) Develop procedures for notifying water users and potential water users of the requirements of this part.

(g) If the department receives a registration for a zone B or a zone C withdrawal or issues a permit under section 32723 or the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, for a zone B or zone C withdrawal, place a notice on the department's website and notify by electronic mail all of the following that have requested under subsection (2) an electronic mail notification:

(i) Conservation districts.

(ii) Regional planning agencies.

(iii) Watershed management planning committees.

(iv) Storm water committees established under part 31.

(v) The chief elected officials of the local units of government.

(vi) Community supplies owned by political subdivisions.

(vii) A water users committee established under section 32725.

(2) An organization listed in subsection (1)(g) that wishes to receive an electronic mail notification of withdrawals described in subsection (1)(g) that are located in its vicinity shall provide to the department an electronic mail address.

(3) Upon receipt of notification from the department under subsection (1)(g), the notified entities may form a water resources assessment and education committee in order to assess trends in water use in the vicinity of the withdrawal and educate water users. The department shall assist in the formation of these water resources assessment and education committees and may provide them with technical information regarding water use and capacity within their vicinity, aggregated at the stream reach level. Meetings of water resources assessment and education committees shall be open to the general public. A water resources assessment and education committee formed under this subsection may provide educational materials and recommendations regarding any of the following:

(a) Long-term water resources planning.

(b) Use of conservation measures.

(c) Drought management activities.

(d) Other topics related to water use as identified by the committee.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2008, Act 184, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

**324.32711, 324.32712 Repealed. 2006, Act 33, Imd. Eff. Feb. 28, 2006.**

**Compiler's note:** The repealed sections pertained to an exemption from water withdrawal reporting requirements for a public water supply and the prohibition on the department to mandate a permit or regulate water withdrawal.

**Popular name:** Act 451

**Popular name:** NREPA

**324.32713 Civil action; commencement; civil fine; recovery of surveillance and enforcement costs.**

Sec. 32713. (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 rule promulgated under this part, including falsifying a record submitted under this part. An action under this

section shall be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance.

(2) In addition to any other relief granted under subsection (1), the court may impose a civil fine as follows:

(a) For a person who knowingly violates section 32721 or 32723 or the terms of a permit issued under section 32723, a civil fine of not more than \$10,000.00 per day of violation.

(b) For all other violations of this part, a civil fine of not more than \$1,000.00.

(3) In addition to a fine imposed under subsection (2), the attorney general may file a suit in a court of competent jurisdiction to recover the full value of the costs of surveillance and enforcement by the state resulting from the violation.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 186, Eff. Oct. 7, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32714 Water use protection fund; creation; disposition of assets; investments; money remaining in fund; expenditures.**

Sec. 32714. (1) The water use protection fund is created within the state treasury.

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

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

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

(a) The implementation and administration of this part.

(b) The preparation of the statewide groundwater inventory and map under section 32802.

(c) The expenses of the groundwater conservation advisory council under part 328.

(d) The implementation and administration of part 317.

**History:** Add. 1996, Act 434, Imd. Eff. Dec. 2, 1996;—Am. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32721 Large quantity withdrawal; prohibition; exception; certain large quantity withdrawals subject to definition of adverse resource impact existing on February 28, 2006.**

Sec. 32721. (1) A person shall not make a new or increased large quantity withdrawal from the waters of the state that causes an adverse resource impact.

(2) This section does not apply to the baseline capacity of a large quantity withdrawal or a well capable of making a large quantity withdrawal that existed on February 28, 2006.

(3) This section does not apply to a withdrawal that is utilized solely for fire suppression.

(4) A person who developed the capacity to make a new or increased large quantity withdrawal on or after February 28, 2006 and prior to February 1, 2009 or who received a determination under former section 32724 during that period is subject to the definition of adverse resource impact that existed on February 28, 2006.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 183, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32722 Presumption.**

Sec. 32722. (1) For new or increased large quantity withdrawals developed on or after February 28, 2006 and prior to the implementation date of the assessment tool under section 32706a, there is a rebuttable presumption that the withdrawal will not cause an adverse resource impact in violation of section 32721 under either of the following circumstances:

(a) The location of the withdrawal is more than 1,320 feet from the banks of an affected stream reach.

(b) The withdrawal depth of the well is at least 150 feet.

(2) If the assessment tool determines that a withdrawal is a zone A or a zone B withdrawal and is not likely

to cause an adverse resource impact, there is a rebuttable presumption that the withdrawal under the conditions that were the basis for the assessment tool's determination will not cause an adverse resource impact in violation of section 32721.

(3) If the department determines, based upon a site-specific review, or in connection with a permit or approval issued under section 32723 or the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, that a withdrawal is not likely to cause an adverse resource impact, there is a rebuttable presumption that the withdrawal under the conditions that were the basis of the department's determination will not cause an adverse resource impact in violation of section 32721.

(4) A presumption under this section is not valid if the capacity to make the withdrawal is not developed within 18 months after the withdrawal is registered. A presumption under this section may be rebutted by a preponderance of evidence that a new or increased large quantity withdrawal from the waters of the state has caused or is likely to cause an adverse resource impact.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 183, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32723 Water withdrawal permit; persons required to obtain; application; fee; issuance; conditions; revocation; petition for contested case hearing; exemptions from permit requirements.**

Sec. 32723. (1) Except as provided in subsection (13), the following persons shall obtain a water withdrawal permit prior to making the withdrawal:

(a) A person who proposes to develop withdrawal capacity to make a new withdrawal of more than 2,000,000 gallons of water per day from the waters of the state to supply a common distribution system.

(b) A person who proposes to develop increased withdrawal capacity beyond baseline capacity of more than 2,000,000 gallons of water per day from the waters of the state to supply a common distribution system.

(c) A person who proposes to develop withdrawal capacity to make a new or increased large quantity withdrawal of more than 1,000,000 gallons of water per day from the waters of the state to supply a common distribution system that a site-specific review has determined is a zone C withdrawal.

(d) A person who proposes to develop a new or increased withdrawal capacity that will result in an intrabasin transfer of more than 100,000 gallons per day average over any 90-day period.

(2) A person shall apply for a water withdrawal permit under this section by submitting an application to the department containing the information described in section 32706c(1)(a) to (e) and an evaluation of existing hydrological and hydrogeological conditions. If the applicant proposes to undertake a preventative measure along with the withdrawal, the property owner shall provide the department with a detailed description of the preventative measure and relevant information as to how the preventative measure will be implemented. In addition, the applicant shall submit an application fee in the amount of \$2,000.00. The department shall transmit application fees collected under this section to the state treasurer to be credited to the water use protection fund created in section 32714.

(3) An application submitted under subsection (2) is considered to be administratively complete effective 30 days after it is received by the department unless the department notifies the applicant, in writing, during this 30-day period that the application is not administratively complete or that the fee required to be accompanied with the application has not been paid. If the department determines that the application is not administratively complete, the notification shall specify the information necessary to make the application administratively complete. If the department notifies the applicant as provided in this subsection, the 30-day period is tolled until the applicant submits to the department the specified information or fee.

(4) The department shall provide public notification of its receipt of applications under this section and shall provide a public comment period of not less than 45 days before applications are acted upon under subsection (5).

(5) The department shall make a decision whether to grant or deny a water withdrawal permit under this section within 120 days of receipt of an administratively complete application.

(6) The department shall issue a water withdrawal permit under subsection (1)(a), (b), or (c) if all of the following conditions are met:

(a) All water withdrawn, less any consumptive use, is returned, either naturally or after use, to the source watershed.

(b) The withdrawal will be implemented so as to ensure that the proposal will result in no individual or cumulative adverse resource impacts. Cumulative adverse resource impacts under this subdivision shall be evaluated by the department based upon available information gathered by the department.

(c) Subject to section 32726, the withdrawal will be implemented so as to ensure that it is in compliance with all applicable local, state, and federal laws as well as all legally binding regional interstate and international agreements, including the boundary waters treaty of 1909.

(d) The proposed use is reasonable under common law principles of water law in Michigan.

(e) For permit applications received on or after January 1, 2009, the applicant has self-certified that he or she is in compliance with environmentally sound and economically feasible water conservation measures developed by the applicable water user's sector under section 32708a or has self-certified that he or she is in compliance with environmentally sound and economically feasible water conservation measures developed for the water use associated with that specific withdrawal.

(f) The department determines that the proposed withdrawal will not violate public or private rights and limitations imposed by Michigan water law or other Michigan common law duties.

(7) The department shall issue a water withdrawal permit under subsection (1)(d) if the transfer complies with section 4.9 of the compact.

(8) In reviewing a proposed preventative measure, the department shall consider the effect of the preventative measure on preventing an adverse resource impact by diminishing the effect of the withdrawal on stream or river flow or the temperature regime of the stream or river. If the department approves a preventative measure in conjunction with a water withdrawal permit under this section, the department shall enter into a legally enforceable implementation schedule for completion of the preventative measure.

(9) A proposed use for which a water withdrawal permit is issued under this section shall be considered to satisfy the requirements of section 4.11 of the compact.

(10) A permit issued under part 31 pursuant to 33 USC 1326(b) shall be considered sufficient to demonstrate that there will not be an adverse resource impact under section 32721 and satisfies the conditions for a water withdrawal permit under this section. Upon receipt of an application under this section and evidence that the applicant holds a part 31 permit described in this subsection, the department shall grant the applicant a water withdrawal permit under this subsection.

(11) The department may revoke a water withdrawal permit issued under this section if the department determines following a hearing, based upon clear and convincing scientific evidence, that the withdrawal is causing an adverse resource impact.

(12) A person who is aggrieved by a determination of the department under this section related to a water withdrawal permit may file a sworn petition with the department setting forth the grounds and reasons for the complaint and asking for a contested case hearing on the matter pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A petition filed more than 60 days after action on the water withdrawal permit may be rejected by the department as being untimely. The department shall issue a final decision on a petition for a contested case hearing within 6 months after receiving the petition. A determination, action, or inaction by the department following a contested case hearing is subject to judicial review as provided in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(13) The following withdrawals are not required to obtain a water withdrawal permit under this section:

(a) A withdrawal by a community supply that holds a permit under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(b) Seasonal withdrawals of not more than 2,000,000 gallons of water per day average in any consecutive 90-day period to supply a common distribution system unless the withdrawals result in a diversion.

(c) A withdrawal for the production of bottled drinking water approved by the department under a water source review conducted under section 17 of the safe drinking water act, 1976 PA 399, MCL 325.1017.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 180, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32724 324.32724 Repealed. 2008, Act 181, Imd. Eff. July 9, 2008.**

**Compiler's note:** The repealed section pertained to persons exempt from permit requirements.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32725 Water users committee; establishment; purpose; composition; notice of withdrawal; occurrence of adverse resource impacts; recommended solution proposed by department; order by director; petition; "unverified petition" and "permit holders" defined.**

Sec. 32725. (1) All persons making large quantity withdrawals within a watershed are encouraged to establish a water users committee to evaluate the status of current water resources, water use, and trends in

water use within the watershed and to assist in long-term water resources planning. A water users committee may be composed of all registrants, permit holders, and local government officials within the watershed. Upon establishment of a water users committee, a participating local government official may create an ad hoc subcommittee of residents of that local unit of government to provide that local government official with information and advice on water resources, water use, and trends in water use within the local unit of government.

(2) If the department authorizes a zone B withdrawal in a cold-transitional river system or a zone C withdrawal, the department shall notify all registrants, permit holders, and local government officials within the watershed of the withdrawal and of the authority under this section to establish a water users committee and may provide them technical information regarding water use and capacity within their vicinity aggregated at the stream reach level.

(3) If the department determines by reasonable scientifically-based evidence that adverse resource impacts are occurring or are likely to occur from 1 or more large quantity withdrawals, the department shall notify the water users committee in the watershed or shall convene a meeting of all registrants and permit holders within the watershed and shall attempt to facilitate an agreement on voluntary measures that would prevent adverse resource impacts.

(4) If, within 30 days after the department has notified the water users committee or convened the meeting under subsection (3), the registrants and permit holders are not able to voluntarily agree to measures that would prevent adverse resource impacts, the department may propose a solution that the department believes would equitably resolve the situation and prevent adverse resource impacts. The recommended solution is not binding on any of the parties.

(5) The director may, without a prior hearing, order permit holders to immediately restrict a withdrawal if the director determines by clear and convincing scientific evidence that there is a substantial and imminent threat that the withdrawal is causing or is likely to cause an adverse resource impact. The order shall specify the date on which the withdrawal must be restricted and the date on which it may be resumed. An order issued under this section shall remain in force and effect for not more than 30 days and may be renewed for an additional 30 days if the director determines by clear and convincing scientific evidence that conditions continue to pose a substantial and imminent threat that the withdrawal is causing or is likely to cause an adverse resource impact. The order shall notify the person that the person may request a contested case hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The hearing shall be held within 10 business days following the request, unless the permittee requests a later date. As an alternative to requesting a contested case hearing, a person subject to an order under this section may seek judicial review of the order as provided in the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

(6) A registrant or permit holder may submit a petition to the director alleging that adverse resource impacts are occurring or are likely to occur from 1 or more water withdrawals. The director shall either investigate the petition or forward the petition to the director of the department of agriculture if the water withdrawals are from an agricultural well. The petition shall be in writing and shall include all the information requested by the director or the director of the department of agriculture, as appropriate.

(7) A person who submits more than 2 unverified petitions under this section within 1 year may be ordered by the director to pay for the full costs of investigating any third or subsequent unverified petition. As used in this subsection, "unverified petition" means a petition in response to which the director determines that there is not reasonable evidence to suspect adverse resource impacts.

(8) As used in this section, "permit holders" means persons holding a permit under section 32723 and persons holding a permit under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

**History:** Add. 2006, Act 36, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 184, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32726 Local ordinance.**

Sec. 32726. Except as authorized by the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, a local unit of government shall not enact or enforce an ordinance that regulates a large quantity withdrawal. This section is not intended to diminish or create any existing authority of municipalities to require persons to connect to municipal water supply systems as authorized by law.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

**Popular name:** NREPA



### **324.32727 Exemptions; compilation and sharing of certain data.**

Sec. 32727. (1) The following withdrawals are exempt from the requirements of this part unless they result in a diversion:

(a) A withdrawal undertaken as part of an activity authorized by the department under part 111, 115, 201, 213, or 615.

(b) A withdrawal undertaken as part of an activity authorized by the United States environmental protection agency under either of the following:

(i) The comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510.

(ii) The resource conservation and recovery act of 1976, Public Law 94-580.

(c) A withdrawal that is undertaken for hydroelectric generation at sites certified, licensed, or permitted by the federal energy regulatory commission.

(d) A hydroelectric facility authorized under section 12 of chapter 264 of the act of March 3, 1909, commonly known as the river and harbor act of 1909, 35 Stat. 821.

(e) A hydroelectric facility authorized under section 1075(c) of the intermodal surface transportation efficiency act of 1991, Public Law 102-240.

(f) A hydroelectric facility authorized under Public Law 85, chapter 1368, 34 Stat. 102.

(g) Removal of water from an artificially created surface water body that has as its primary source of water either of the following:

(i) A withdrawal that is not a new or increased large quantity withdrawal.

(ii) A registered new or increased large quantity withdrawal that has been determined by the assessment tool, a site-specific review, or a permit issued under section 32723 to be a withdrawal that is not likely to cause an adverse resource impact.

(h) A withdrawal from a noncommercial well located on the following residential property:

(i) Single-family residential property unless that well is a lake augmentation well.

(ii) Multifamily residential property not exceeding 4 residential units and not more than 3 acres in size unless that well is a lake augmentation well.

(2) The director of the department shall ensure that data in the possession of the state related to withdrawals that are not regulated under this part are compiled and shared with departmental personnel responsible for implementing this part.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 183, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32728 Construction and scope of act; rules.**

Sec. 32728. (1) This part shall not be construed as affecting, intending to affect, or in any way altering or interfering with common law water rights or property rights or the applicability of other laws providing for the protection of natural resources or the environment or limit, waive, cede, or grant any rights or interest that the state possesses as sovereign for the people of the state in the waters or natural resources of the state.

(2) This part does not limit the right of a person whose interests have been or will be adversely affected to institute proceedings in circuit court against any person to protect such interests.

(3) Except as specifically authorized under this part, this part does not authorize the promulgation of rules.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 185, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32729 Fees not authorized; exception.**

Sec. 32729. Except as specifically authorized under this part, this part does not authorize the assessment of fees.

**History:** Add. 2008, Act 185, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32730 Compact; implementation.**

Sec. 32730. The compact shall be implemented as follows:

(a) Except as specifically provided in this part, water withdrawals originating within this state shall be regulated exclusively under this part.

(b) A proposed use for which a water withdrawal permit is issued under section 32723 shall be considered to satisfy the requirements of section 4.11 of the compact.

(c) The 2008 amendments to this part, the 2008 amendments to part 328, and the 2008 amendments to sections 4 and 17 of the safe drinking water act, 1976 PA 399, MCL 325.1004 and 325.1017, are intended to fully implement the compact in this state. For purposes of section 9.1 of the compact, all acts and parts of acts that were inconsistent with the compact on the effective date of the amendatory act that added this section have been modified, as necessary, to be consistent with the compact, and therefore section 9.1 does not repeal any acts or parts of acts.

(d) If the council proposes a revision to the standard of review and decision under section 3.1 and 3.3 of the compact, the governor shall notify the standing committees of the legislature with jurisdiction primarily related to natural resources and the environment. A regulation adopted pursuant to section 3.1 and 3.3 of the compact that amends the standard of review and decision shall not be deemed duly adopted in accordance with the statutory authorities and applicable procedures of this state unless the regulation is approved by the legislature and enacted into law.

**History:** Add. 2008, Act 190, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

## PART 328 AQUIFER PROTECTION

### **324.32801 Definitions.**

Sec. 32801. As used in this part:

(a) "Annex 2001" means the Great Lakes charter annex signed by the governors and premiers of the Great Lakes region on June 18, 2001.

(b) "Aquifer" means any water bearing bed or stratum of earth or rock capable of yielding groundwater to a water well in sufficient quantities that can be withdrawn.

(c) "Assessment tool" means the water withdrawal assessment tool provided for in part 327.

(d) "Base flow" means groundwater discharge to rivers and streams.

(e) "Conflict areas" means an aquifer or a portion of an aquifer in which the department has determined that there is reasonable, scientifically based evidence of a pattern of groundwater withdrawal conflicts or a single extended groundwater withdrawal conflict.

(f) "Council" means the water use advisory council created under section 32803.

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

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

(i) "Groundwater" means water below the land surface in a zone of saturation.

(j) "Groundwater withdrawal conflict" means the failure of an existing water well that was constructed in compliance with part 127 of the public health code, 1978 PA 368, MCL 333.12701 to 333.12771, to furnish its normal supply of groundwater because of a progressive decline of the static water level within the aquifer due to the withdrawal of groundwater from the aquifer by a high-capacity well or sump, as determined based on reasonable, scientifically based evidence.

(k) "Static water level" means the distance between the ground surface and the water level within a well that is not being pumped.

**History:** Add. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2008, Act 189, Imd. Eff. July 9, 2008;—Am. 2018, Act 509, Imd. Eff. Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32802 Groundwater data; collection and compilation into statewide groundwater inventory and map; update; availability to public.**

Sec. 32802. (1) Not later than 2 years after the effective date of the amendatory act that added this section, the department shall collect and compile groundwater data into a statewide groundwater inventory and map. The department shall use existing sources of groundwater data where those data are available, including information reported under part 327, information reported under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, and information collected under the groundwater dispute resolution program created in part 317, but may supplement those data through additional studies if those data are incomplete. Following completion of the initial statewide groundwater inventory and map, the department shall update the statewide groundwater inventory and map as new information becomes available. The department shall

include data on all of the following in the statewide groundwater inventory and map:

- (a) Location and water yielding capabilities of aquifers in the state.
  - (b) Aquifer recharge rates in the state, if available to the department.
  - (c) Static water levels of groundwater in the state.
  - (d) Base flow of rivers and streams in the state.
  - (e) Conflict areas in the state.
  - (f) Surface waters, including designated trout lakes and streams, and groundwater dependent natural resources, that are identified on the natural features inventory.
  - (g) The location and pumping capacity of all of the following:
    - (i) Industrial or processing facilities registered under section 32705 that withdraw groundwater.
    - (ii) Irrigation facilities registered under section 32705 that withdraw groundwater.
    - (iii) Public water supply systems that have the capacity to withdraw over 100,000 gallons of groundwater per day average in any consecutive 30-day period.
  - (h) Aggregate agricultural water use and consumptive use, by township.
- (2) The department shall make the statewide groundwater inventory and map available to the general public.

**History:** Add. 2003, Act 148, Imd. Eff. Aug. 8, 2003.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32803 Water use advisory council; creation; qualifications and appointment of members; appointment of technical advisors; duties of council; report.**

Sec. 32803. (1) The water use advisory council is created within the department. The council shall consist of all of the following members:

- (a) Four individuals appointed by the senate majority leader as follows:
  - (i) One individual representing business and manufacturing interests.
  - (ii) One individual representing public utilities.
  - (iii) One individual representing a statewide angler association.
  - (iv) One individual representing a statewide agricultural organization.
- (b) Four individuals appointed by the speaker of the house of representatives as follows:
  - (i) One individual representing registered well drilling contractors with hydrology and drilling field experience.
  - (ii) One individual representing local units of government.
  - (iii) One individual representing agricultural irrigators.
  - (iv) One individual representing wetlands conservation organizations.
- (c) Five individuals appointed by the governor as follows:
  - (i) One individual representing municipal water suppliers.
  - (ii) One individual representing a statewide conservation organization.
  - (iii) One individual representing a statewide riparian landowners association.
  - (iv) One individual representing professional hydrologists and hydrogeologists, as defined in section 32706c, with hydrogeology field experience.
  - (v) One individual representing Indian tribes.
- (d) Four individuals appointed by the director as follows:
  - (i) One individual representing nonagriculture irrigators.
  - (ii) One individual representing the aggregate industry.
  - (iii) One individual representing environmental organizations.
  - (iv) One individual representing local watershed councils.
- (e) Six individuals serving as ex officio, nonvoting members, representing the department, the department of agriculture and rural development, the department of natural resources, the office of the Great Lakes, the Michigan geological survey, and the attorney general.

(2) The appointments to the council under subsection (1) shall be made not later than 60 days after the effective date of the 2018 amendatory act that amended this section. The individual making the appointment under subsection (1) shall give consideration and deference to individuals currently serving on the department's water use advisory council.

(3) An individual appointed to the council shall serve for a term of 4 years, and may be reappointed. Individuals appointed to the council serve without compensation. A vacancy on the council shall be filled in the same manner as the original appointment.

(4) The council may elect co-chairs, form committees, set meeting schedules and work plans to address the

council's responsibilities as provided by law, address charges from the department, and establish priorities. Members of the council may participate in any committees created by the council. Members of the council shall strive to make recommendations by consensus vote, and may submit opposition statements that must be included in the council's report under subsection (7).

(5) The council may appoint technical advisors with specific scientific, technical, legal, and similar expertise relevant to the council's responsibilities. Technical advisors may participate in any council meetings, committees, or subgroups created by the council but shall not vote on recommendations made by the council to the department or legislature under subsection (7).

(6) A meeting of the council must be held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(7) The council shall do all of the following:

(a) Make recommendations to the department, the department of agriculture and rural development, the department of natural resources, and the legislature on the implementation of part 327, including all of the following:

(i) Strategies for collection, verification, and use of data, including geology, aquifer characteristics, and groundwater and surface water hydrology.

(ii) Improvement, verification, regionalization, and integration of models used in the water withdrawal assessment tool and site-specific review, including models developed by private and public entities, organizations, or individuals.

(iii) Identification of research, public-private partnerships, training, and changes to the water withdrawal assessment tool needed to improve the department's ability to implement part 327 and to improve the water withdrawal assessment process under part 327.

(b) Study and make recommendations, as needed or as requested by the relevant standing committees of the legislature or the department, regarding the development and refinement of the water withdrawal assessment process under part 327.

(c) Make recommendations on reconciling conflicts in state laws related to the use of the waters of the state.

(d) At least every 2 years after the effective date of the 2018 amendatory act that amended this section, provide a report to the senate majority leader, the speaker of the house of representatives, and the standing committees of the legislature with jurisdiction primarily related to natural resources and the environment that makes recommendations regarding how the water withdrawal assessment process under part 327 could be improved. The report shall contain specific recommendations on the use of the assessment tool, the site-specific review process, the permitting process, the staffing, budgetary, software, and other resources required by the departments to successfully implement part 327, and any other measure that the council determines would improve the water withdrawal assessment process under part 327.

**History:** Add. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2006, Act 34, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 189, Imd. Eff. July 9, 2008;—Am. 2018, Act 509, Imd. Eff. Dec. 28, 2018.

**Compiler's note:** For abolishment of the groundwater conservation advisory council and transfer of its powers and duties to the department of environmental quality, see E.R.O. No. 2007-5, compiled at MCL 324.99907.

For transfer of powers and duties of water resources conservation advisory council from department of natural resources to natural resources commission, and abolishment of the advisory council, see E.R.O. No. 2009-31, compiled at MCL 324.99919.

**Popular name:** Act 451

**Popular name:** NREPA

## PART 329 GREAT LAKES PROTECTION

### **324.32901 Definitions.**

Sec. 32901. As used in this part:

(a) "Board" means the Michigan Great Lakes protection fund technical advisory board created in section 32908.

(b) "Fund" means the Michigan Great Lakes protection fund created in section 32905.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For the type III transfer of the office of the great lakes within the department of natural resources to the new office of the great lakes within the department of environment, great lakes, and energy, see E.R.O. 2019-1, compiled at MCL 324.99923.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32902 Legislative findings.**

Sec. 32902. The legislature finds that:

(a) The Great Lakes are a valuable resource providing an important source of food, fresh water, recreation, beauty, and enjoyment.

(b) The ecosystems of the Great Lakes, which provide sustenance and recreation to the people of this state and other states and nations, have been severely affected and are continually threatened by the introduction of foreign species into the lakes and by pollution of the Great Lakes waters.

(c) Careful management of the Great Lakes will permit the rehabilitation and protection of the lakes, their waters, and their ecosystems, while continuing and expanding their use for industry, food production, transportation, and recreation.

(d) This state, because it is surrounded by the Great Lakes and because the Great Lakes contribute in innumerable ways to the state's economy, recreation, and way of life, must act as a steward for the protection, enhancement, and wise utilization of the Great Lakes.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32903 Office of the Great Lakes; establishment; purpose; duties.**

Sec. 32903. The office of the Great Lakes is established within the department of natural resources and is designated as the lead agency within state government for the development of policies, programs, and procedures to protect, enhance, and manage the Great Lakes. The office of the Great Lakes shall do all of the following:

(a) Advise the governor, the director, and the directors of other appropriate state departments on appropriate steps needed to coordinate state policy and state actions on the Great Lakes and to implement an ecosystem approach to this state's Great Lakes policies.

(b) Provide representation at the national level for this state's Great Lakes interests.

(c) Represent this state before Great Lakes policy development bodies such as the international joint commission.

(d) Ensure adequate research and staff work to maintain this state's regional leadership in resolving Great Lakes problems.

(e) Promote the wise use of the ports of this state and Great Lakes water transportation.

(f) Promote the Great Lakes tourism industry.

(g) Advocate the interests of this state in actions, policies, and legislation affecting the Great Lakes proposed in other Great Lakes states, Canadian provinces, Great Lakes policy development bodies, and the federal government.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For transfer of the Office of the Great Lakes, including but not limited to the authority, powers, duties, functions, and responsibilities, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For transfer of the office of the Great Lakes from department of environmental quality to department of natural resources and environment, see E.R.O. No. 2009-31, compiled at MCL 324.99919.

For transfer of office of Great Lakes from department of natural resources and environment to department of environmental quality, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

For transfer of office of the Great Lakes from department of environmental quality to department of natural resources, see E.R.O. No. 2017-5, compiled at MCL 324.99922.

For the type III transfer of the office of the Great Lakes within the department of natural resources to the new office of the Great Lakes within the department of environment, Great Lakes, and energy, see E.R.O. 2019-1, compiled at MCL 324.99923.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32904 Reports, analysis, and inventory to be submitted by governor to legislature.**

Sec. 32904. The governor, with the assistance of the office of the Great Lakes, shall prepare and submit to the legislature the following:

(a) An annual report, submitted by December 31 of each year, on the state of the Great Lakes.

(b) A comprehensive analysis, in the governor's annual budget message, of all the funds from state and federal sources that the governor recommends be expended for the protection, enhancement, and management of the Great Lakes.

(c) A comprehensive inventory, submitted by August 2, 1986, of all state, federal, interstate, and international agencies, programs, and projects associated with the protection, enhancement, and management



of the Great Lakes.

(d) A report, submitted by February 2, 1987, on the status of the agreement between the United States and Canada known as the Great Lakes water quality agreement of 1978, and recommending steps to be taken to execute the state's obligations in that agreement and to promote the state's role and objectives in the renegotiation of that agreement.

(e) A report, submitted by August 2, 1987, listing the priority research needs with respect to the Great Lakes.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For transfer of the Office of the Great Lakes, including but not limited to the authority, powers, duties, functions, and responsibilities, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For the type III transfer of the office of the Great Lakes within the department of natural resources to the new office of the Great Lakes within the department of environment, Great Lakes, and energy, see E.R.O. 2019-1, compiled at MCL 324.99923.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32905 Michigan Great Lakes protection fund; creation; sources of money; investment of fund; crediting interest and earnings to fund; money not to revert to general fund; annual report.**

Sec. 32905. (1) The Michigan Great Lakes protection fund is created in the state treasury.

(2) The fund shall receive money from the following sources:

(a) Money received by the state from the Great Lakes protection fund authorized in part 331.

(b) Gifts and contributions to the fund.

(c) Other sources provided by law.

(3) The state treasurer shall direct the investment of the fund. Interest and earnings of the fund shall be credited to the fund. Money in the fund at the end of the fiscal year shall remain in the fund and shall not revert to the general fund.

(4) The state treasurer shall annually report to the board and the department on the amount of money in the fund.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32906 State treasurer to credit money to fund.**

Sec. 32906. The state treasurer shall credit all money the state receives from the Great Lakes protection fund as authorized in part 331 to the fund.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32907 Use of money in fund.**

Sec. 32907. Money in the fund shall be used only for programs or grants to supplement existing Great Lakes research and protection programs consistent with the purposes of part 331 including, but not limited to, the following:

(a) Research on the economic, environmental, and human health effects of contamination in the Great Lakes.

(b) The collection and analysis of data on the Great Lakes.

(c) The development of new or improved environmental cleanup technologies.

(d) Research to assess the effectiveness of pollution control policies.

(e) The assessment of the health of Great Lakes fish, waterfowl, and other organisms.

(f) Other programs consistent with the purposes of part 331.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32908 Michigan Great Lakes protection fund technical advisory board; creation; appointment, qualifications, and terms of members; removal of member; election of chairperson; meetings; public notice; member not to receive grant.**

Sec. 32908. (1) The Michigan Great Lakes protection fund technical advisory board is created within the department. The board shall consist of the following members:

(a) An individual appointed by the department who has knowledge or expertise in Great Lakes water issues.

(b) An individual appointed by the department who has knowledge or expertise in the effects of air pollution on the Great Lakes.

(c) Six individuals appointed by the department as follows:

(i) One individual from an environmental organization.

(ii) One individual from a business or industry related to the Great Lakes.

(iii) One individual who has performed research related to the water quality of the Great Lakes.

(iv) One individual who has performed research related to public health concerns associated with the Great Lakes.

(v) One individual who has knowledge or expertise in the demographics of the Great Lakes region or the climatology of the Great Lakes region.

(vi) One individual who represents the hazardous substance research center.

(2) A member of the board shall serve for a term of 3 years. However, of the first appointments to the board by the department under subsection (1)(c), 3 shall be appointed to serve 2-year terms and 3 shall be appointed to serve 1-year terms.

(3) A member of the board may be removed for inefficiency, neglect of duty, or malfeasance in office by the body that appointed him or her.

(4) The board shall elect a chairperson from among its members. The board shall meet at the call of the chairperson at least annually. A meeting of the board shall be held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by that act.

(5) A member of the board shall not receive a grant under this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32909 Duties of board generally.**

Sec. 32909. The board shall do both of the following:

(a) Advise this state's representatives on the board of directors of the Great Lakes protection fund authorized in part 331.

(b) Consult with the technical advisory committee of the Great Lakes protection fund.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32910 Programs and grants to be funded; advice to department; compilation and submission of list; statement of guidelines; appropriation.**

Sec. 32910. (1) The board shall annually advise the department on the programs or grants that should be funded under this part and shall submit a list of these programs or grants to the department for its approval. This list shall be compiled in order of priority. Upon approval of the list, the department shall submit the list to the legislature in January of each year.

(2) The department and the board shall include with each list submitted under subsection (1) a statement of the guidelines used in listing and assigning the priority of the proposed programs or grants.

(3) The legislature shall annually appropriate money from the Michigan Great Lakes protection fund and from the Great Lakes spill prevention research fund for programs or grants pursuant to this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32911 Great Lakes spill prevention research fund; creation; appropriations, gifts, and contributions; investments; disposition of interest and earnings; reversions; use of money; definitions.**

Sec. 32911. (1) The Great Lakes spill prevention research fund is created in the state treasury.

(2) The research fund may receive money as appropriated by the legislature, from gifts and contributions to

the fund, and as otherwise provided by law. The state treasurer shall direct the investment of the research fund. Interest and earnings of the research fund shall be credited to the research fund. Money in the research fund at the close of the fiscal year shall remain in the research fund and shall not revert to the general fund.

(3) Money in the research fund shall be used only for the following purposes:

(a) Research into the prevention of spills during the transportation of hazardous materials on the Great Lakes and major tributaries of the Great Lakes.

(b) Research on selected pollution incidents to determine causal factors in spills of hazardous materials on the Great Lakes and major tributaries of the Great Lakes.

(c) Research into a total systems approach to address Great Lakes pollution problems that include human factors and socio-technical considerations.

(d) Research into the role of human factors in spills of hazardous materials on the Great Lakes and major tributaries of the Great Lakes, including human factors in pollution alarms, pollution monitoring systems, and instrumentation.

(e) Research into the deployment of existing and new technology related to transportation of hazardous materials on the Great Lakes and major tributaries of the Great Lakes and the appropriate allocation of functions between individuals and machines.

(f) Research to determine the relative contribution of spills of hazardous materials into the Great Lakes and major tributaries of the Great Lakes to the total pollution of the Great Lakes basin.

(g) Research on and modeling of spills to determine their effect on water intakes.

(4) As used in this section:

(a) "Great Lakes" means the Great Lakes and their connecting waterways over which the state has jurisdiction.

(b) "Hazardous material" means a chemical or other material which is or may become injurious to the public health, safety, or welfare, or to the environment.

(c) "Major tributary of the Great Lakes" means a river that flows into the Great Lakes that has a drainage area in excess of 700 square miles or has a drainage area that contains a population of 1,000,000 or more individuals.

(d) "Research fund" means the Great Lakes spill prevention research fund created in subsection (1).

(e) "Spill" means any leaking, pumping, pouring, emptying, emitting, discharging, escaping, leaching, or disposing of a hazardous material in a quantity which is or may become injurious to the public health, safety, or welfare or to the environment.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

## PART 331

### REGIONAL GREAT LAKES PROTECTION FUND

#### 324.33101 Definitions.

Sec. 33101. As used in this part:

(a) "Agreement" means the document entitled "Great Lakes protection fund agreement" signed by the governor on February 26, 1989.

(b) "Great Lakes protection fund" or "fund" means the Great Lakes protection fund approved in the agreement.

(c) "Great Lakes toxic substance control agreement" means the document entitled "Great Lakes toxic substance control agreement" signed by the governor on May 21, 1986.

(d) "Great Lakes water quality agreement of 1978" means the "Great Lakes water quality agreement of 1978" between the United States and Canada signed November 22, 1978, including the phosphorous load reduction supplement signed October 7, 1983, and as amended by protocol signed November 18, 1987.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For transfer of the Office of the Great Lakes, including but not limited to the authority, powers, duties, functions, and responsibilities, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For the type III transfer of the office of the Great Lakes within the department of natural resources to the new office of the Great Lakes within the department of environment, Great Lakes, and energy, see E.R.O. 2019-1, compiled at MCL 324.99923.

**Popular name:** Act 451

**Popular name:** NREPA

#### 324.33102 Legislative findings and declaration.

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Sec. 33102. The legislature finds and declares that:

(a) The Great Lakes protection fund has been created to advance the principal goals and objectives of the Great Lakes toxic substances control agreement and the Great Lakes water quality agreement of 1978.

(b) The Great Lakes protection fund has been created to finance and support state and regional projects for the protection, research, and cleanup of the Great Lakes.

(c) There is a need for a stable and predictable funding commitment for the preservation of Great Lakes water quality.

(d) The protection of the Great Lakes is of paramount public concern in the interest of the health, safety, and general welfare of the citizens of the state and the participation of the state in the Great Lakes protection fund will assist in achieving this protection.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For transfer of the Office of the Great Lakes, including but not limited to the authority, powers, duties, functions, and responsibilities, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For the type III transfer of the office of the Great Lakes within the department of natural resources to the new office of the Great Lakes within the department of environment, Great Lakes, and energy, see E.R.O. 2019-1, compiled at MCL 324.99923.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33103 Great Lakes protection fund; formation and operation; agreement; appointment of members to board of directors.**

Sec. 33103. (1) The governor, on behalf of this state, may take all steps necessary to join with other states in the formation and operation of the Great Lakes protection fund provided that the fund does all of the following:

(a) Provides for the fund to receive money from each of the participating states and to expend only the interest and earnings of the fund for the purposes of subdivision (b).

(b) Provides for the funding of activities related to Great Lakes research and protection including but not limited to:

(i) Research on the economic, environmental, and human health effects of contamination in the Great Lakes.

(ii) The collection and analysis of data on the Great Lakes.

(iii) The development of new or improved environmental cleanup technologies.

(iv) Research to assess the effectiveness of pollution control policies.

(v) The assessment of the health of Great Lakes fish, waterfowl, and other organisms.

(2) The governor shall do all things necessary to implement the agreement.

(3) The governor shall appoint members to the board of directors of the Great Lakes protection fund in accordance with the agreement.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For transfer of the Office of the Great Lakes, including but not limited to the authority, powers, duties, functions, and responsibilities, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For the type III transfer of the office of the Great Lakes within the department of natural resources to the new office of the Great Lakes within the department of environment, Great Lakes, and energy, see E.R.O. 2019-1, compiled at MCL 324.99923.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33104 Withdrawal of participation in fund; dissolution of fund and distribution of assets; agreement to extend deadline.**

Sec. 33104. (1) If, by February 28, 1991, fewer than 4 states whose representatives signed the agreement have enacted legislation and provided funding as required by the agreement to participate in the fund, the governor shall take all steps necessary to withdraw the participation of the state in the fund, to dissolve the fund, and to equitably distribute the assets of the fund.

(2) If 2/3 of the states whose representatives signed the agreement agree to extend the deadline provided in subsection (1), the governor shall not withdraw the participation of the state during the extension period.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33105 Delegation of responsibilities.**

Sec. 33105. The governor may delegate his or her responsibilities under this part to the department.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

## PART 333 COASTAL BEACH EROSION

### **324.33301 Coastal beach erosion or protection; expenditures authorized.**

Sec. 33301. Any political subdivision of the state, by resolution of its legislative body adopted by a majority vote of its full membership, is authorized to make expenditures from its general fund, contingent fund, or from any special funds available for the purposes described in this section, to undertake, either independently or in cooperation with any other political subdivision or with any agency of the state or federal government, investigative or study functions related to coastal beach erosion or protection.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

## PART 337 FLOOD, DRAINAGE, AND BEACH EROSION CONTROL

### **324.33701 Flood, drainage, or beach erosion control; lands; acquisition; contract with federal government; terms.**

Sec. 33701. The township board of any township, the legislative body of any incorporated city or incorporated village, or the board of county road commissioners of any county when directed by the county board of commissioners of the county, pursuant to a resolution adopted by a 2/3 vote of the members of the county board of commissioners, is authorized to acquire any and all interests in lands necessary to any flood control, drainage, or beach erosion control project and is authorized to contract with the federal government or any agency of the federal government, whereby the federal government or agency will pay the whole or a part of the cost of flood control, drainage control, or beach erosion control projects or will perform the whole or any part of the work connected with the project, or both, which contract may include any specific terms, including, but not limited to, the holding and saving of the United States free from damages due to the construction works, required by act of congress or federal regulation as a condition for participation on the part of the federal government.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33702 Relief from assessment.**

Sec. 33702. A contract entered into under section 33701 may provide that payments made or work done by the federal government or agency of the federal government relieves it in whole or in part from assessment for the cost of the project.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33703 Contract; provisions.**

Sec. 33703. A contract entered into under section 33701 may provide for the granting, without cost to the United States, of all lands, easements, and rights-of-way necessary for the construction of the project, except as otherwise provided by act of congress or federal regulation. Such a contract may also provide for the maintenance and operation of the project after completion in accordance with regulations prescribed by the



secretary of the army.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33704 Expenditures from municipal or county funds.**

Sec. 33704. The township board of any township, the legislative body of any incorporated city or incorporated village, or the county board of commissioners of any county, pursuant to a resolution adopted by a 2/3 vote of its members, is authorized in connection with any contract entered into under section 33701 to make expenditures from its general fund, contingent fund or from any special funds available.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33705 Assurances to federal government.**

Sec. 33705. The township board of any township, the legislative body of any incorporated city or incorporated village, or the board of county road commissioners of any county when directed by the county board of commissioners of the county, pursuant to a resolution adopted by a 2/3 vote of its members, is authorized to grant to the United States assurances as are required by federal flood control acts, by amendments to those acts, and by such other federal acts existing, or which may be enacted in the future, authorizing expenditure of federal funds for flood control, drainage, or beach erosion control projects.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33706 Joint contracts for implementation of part.**

Sec. 33706. The township board of any township, the legislative body of any incorporated city or incorporated village, or the board of county road commissioners of any county when directed by the county board of commissioners of the county, may provide for joint participation and a joint contract or contracts in implementing this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33707 Contracts; borrowing funds from federal government.**

Sec. 33707. Contracts entered into under this part involving the financial ability of the incorporated city, incorporated village, township, or county to meet all obligations and liabilities imposed by the contracts as to cost of lands, easements, rights-of-way, construction, or the maintenance and operation costs of the project or projects are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. Any incorporated city, incorporated village, or township, or the board of county road commissioners of any county when directed by the county board of commissioners, authorized to contract with the federal government or any agency of the federal government under this part, may borrow funds from the federal government or any agency of the federal government to implement this part, which borrowings shall be subject to existing statutes and charter limitations that are applicable to the borrowing. The revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, applies to those borrowings.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 219, Imd. Eff. Apr. 29, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33708 Interest in lands; easement for flood plain; acquisition; declared public purposes.**

Sec. 33708. For the accomplishment of the purposes of this part, any city, incorporated village, township, or board of county road commissioners may acquire any interest in land necessary to any flood control, drainage, or beach erosion control project, or to preserve flood plains, by purchase, gift, exchange, condemnation, or otherwise. If an easement to preserve a flood plain is acquired, the acquiring agency, in any instrument conveying such right or in any eminent domain proceedings instituted therefor, may acquire the further right to use the land subject to the easement, or any part of the easement, for any other public purpose, but only to the extent that the other uses are specifically enumerated in the conveyance or eminent domain proceedings. The legislative body of any city, incorporated village, or township, or the board of county road

commissioners of any county when directed by the county board of commissioners of the county, may institute and prosecute proceedings under the power of eminent domain in accordance with the laws of the state or any local charter relative to condemnation. Two or more adjoining cities, villages, or townships are authorized to maintain proceedings in accordance with the procedure prescribed by Act No. 81 of the Public Acts of 1925, being sections 123.71 to 123.73 of the Michigan Compiled Laws. The purposes contemplated by this part are declared to be public purposes within the meaning of the constitution, state laws, and charters relative to the power of eminent domain.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

## PART 339 CONTROL OF CERTAIN STATE LANDS

### **324.33901 Unpatented overflowed lands, made lands, and Lake St. Clair bottomlands; authority of department.**

Sec. 33901. All of the unpatented overflowed lands, made lands, and Lake St. Clair bottomlands belonging to this state or held in trust by this state as provided in this part shall be held, leased, disposed of by deed, and controlled by the department in the manner provided in this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33902 Powers of department to convey lands; dedication of unleased lands for recreational uses.**

Sec. 33902. The department shall not deed or convey the lands described in section 33901 except as provided in sections 33903 to 33911. The department may dedicate unleased lands of the character described in section 33901 for public hunting, fishing, and other recreational uses.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33903 Conveyance of certain leased lands by department; rights reserved.**

Sec. 33903. The department, upon application of any person who, on the effective date of the 2006 amendatory act that amended this section, holds a lease of any portion or portions of land from this state pursuant to former 1913 PA 326, or this part, or upon application by that person's heirs or assigns, shall execute and deliver to the applicant or his or her heirs or assigns a deed conveying to him or her all of the right, title, and interest of this state in and to the lands described in this section, subject to the paramount rights of navigation, hunting, and fishing that remain in the general public and in the government as now existing and recognized by law. The deeds shall contain the provisions as to residency and club use and occupancy as now set forth in all leases previously granted under former 1913 PA 326. An application under this section must be filed at least 1 year before the date on which the lease expires.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33904 Deeds; prerequisites to granting.**

Sec. 33904. Before the department grants a deed, there shall be presented evidence that the applicant requesting the deed is the lessee of the land, that the land is part of the lands described in section 33903, and that all taxes on the land are paid. All property deeded under this part is thereafter subject to the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, and the recording laws of this state.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33905 Repealed. 2006, Act 496, Imd. Eff. Dec. 29, 2006.**

**Compiler's note:** The repealed section pertained to sale of leased lands in St. Clair Flats.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33906 St. Clair Flats lands; conflicting claims; determination; appeal.**

Sec. 33906. In all cases where there is a contest or conflict between applicants for a deed to the same piece or parcel of land growing out of errors of description, overlapping descriptions, prior leases, or otherwise, the conflicting claims shall be determined by the department at a meeting scheduled by the department after notice to each of the claimants of the time and place of hearing, and in such cases depositions may be taken by any claimant in the manner provided for in taking depositions in the circuit courts of this state. Any party considering himself or herself aggrieved by any decision of the department refusing to grant him or her a deed under this part, whether in case of conflict, contest, or otherwise, shall have a right of appeal to the circuit court for the county in which the land is situated, and the proceedings to take the appeal and the trial of the appeal in any of the courts shall be in accordance with the statutes providing for appeals from district courts of this state, or to take such other action at law or in equity as provided by the statutes and laws of the state of Michigan.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33907 St. Clair Flats area; rules.**

Sec. 33907. The department may promulgate and enforce rules as it considers necessary for the preservation and use of the paramount right of navigation, hunting, and fishing covering the entire St. Clair Flats area.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33908 Receipts; credit of consideration and fees to land and water management permit fee fund.**

Sec. 33908. The consideration received for the execution and delivery of deeds under this part and all fees collected under this part shall be forwarded to the state treasurer and credited to the land and water management permit fee fund created in section 30113.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33909 Repealed. 2006, Act 496, Imd. Eff. Dec. 29, 2006.**

**Compiler's note:** The repealed section pertained to conveyance and sale of lots in St. Clair Flats.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33910 Water highway lands; lease; conveyance to contiguous lessees.**

Sec. 33910. The department, in its discretion, upon application of a person holding a lease or deed under this part to any lands lying contiguous to a water highway as surveyed under former 1899 PA 175, if it is determined that the water highway is no longer needed for navigation, ingress, and egress to surveyed lots, or for any public use, whether dredged or not, may execute and deliver to the applicant a deed subject to all the applicable conditions and provisions of sections 33902 to 33908, to all of the right, title, and interest of the state in and to 1/2 of the surveyed width of that portion of the water highway as lies contiguous to land held under lease or deed by the applicant.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33911 Granting deeds to certain property; requirements.**

Sec. 33911. (1) Upon application of a person that holds a lease from this state of any portion or portions of the real property described in this part, the department may execute and deliver to the applicant a deed conveying all of the right, title, and interest of this state in and to that real property, subject to the paramount rights of hunting, fishing, and navigation, which remain in the general public and in the government as

recognized by law. The deeds shall contain the same provisions as to use and occupancy now set forth in all the leases previously granted under former 1913 PA 326 or under this part. The department shall not grant a deed under this part unless the lessee of the subject property agrees to cancel the lease and relinquishes all rights under the lease.

(2) The department shall not grant a deed under this part for a lot that contains a structure unless the structure and the lot subject to the deed, including seawalls where present, comply with the applicable township building code and county and state sanitation codes and part 325, and the structure is located on a parcel of land that is adequately protected from erosion.

(3) A deed granted under this part shall not include a portion of the original lease that is submerged or lies below the elevation of 575.3 International Great Lakes Datum (IGLD 1985). The department of environmental quality shall perform a site inspection and set stakes, if necessary, to identify the boundaries of the area of the leased lot to be deeded. The applicant shall provide a boundary survey, completed by a professional surveyor, that delineates the area of the real property to be deeded. The state shall retain proprietary ownership in trust over the portion of the leased lot below the ordinary high-water mark of Lake St. Clair at the time of the conveyance.

(4) A deed shall not be granted under this part at less than the estimated land value of the real property as determined by the township in which the real property is located. Appraisal procedures and practices may include utilizing independent fee appraisal contractors. The appraisal shall not include improvements such as buildings, seawalls, and docks. Credit shall not be granted to the lessee for the years remaining on an unexpired lease when determining the sale value to the state. The applicant shall remit the full consideration within 1 year after being notified in writing of the selling price by the department. If the applicant does not remit the full consideration for the deed within 1 year, the department shall close the file and a new application must be submitted.

(5) If the applicant is not satisfied with the fair market value determined by the department under subsection (4), the applicant, within 30 days after receiving the determination, may submit a petition in writing to the circuit court in the thirty-first judicial circuit, and the court shall appoint an appraiser or appraisers from the department's approved listing to conduct an appraisal of the parcel. The decision of the court is final. The applicant shall pay all costs associated with this additional appraisal.

(6) A request for a deed shall be on a form provided by the department of environmental quality and shall be accompanied by an application fee of \$500.00.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33912 Rental valuation periods; determination; improvements; maximum increase; gross sum.**

Sec. 33912. Whenever any person is entitled under this part to lease for the period of 99 years, the department shall divide the term of 99 years into 2 periods of 50 and 49 years each, to be known as rental valuation periods, and the consideration or rental to be paid by the lessee for the first period of 50 years is to be determined by the department at the time such lessee is adjudged entitled to the lease. At the expiration of the first period of 50 years, the department shall redetermine the rental value or consideration to be paid by the lessee for the next succeeding rental period of 49 years until the expiration of the full term of the lease. However, the department, in determining the rental value to be paid by the lessee, shall consider the value of the land only and shall not increase the rental value or consideration for any of the rental periods because of the improvements that may have been made on any of the premises by a lessee. In determining the rental value or consideration to be paid by the lessee for the second valuation period of 49 years, the department shall not increase the rental value or consideration to any sum in excess of double the rental value or consideration determined for the first valuation period of 50 years. The consideration so fixed shall, as applied to the claimants coming within the provisions of this section, be a gross sum and not an annual rental.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33913-324.33915 Repealed. 2006, Act 496, Imd. Eff. Dec. 29, 2006.**

**Compiler's note:** The repealed sections pertained to rental valuation periods, applications for leases, and uncontested applications.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33916 Former lease holder as trespasser; recovery of possession by state.**

Sec. 33916. If a lease under this part expires and a deed is not issued under this part to the former lease holder, the former lease holder shall be considered to be a trespasser, and an action may be brought in the circuit court for the county in which that land is located, in the name of the people of this state, by the attorney general of this state, to recover possession of that land.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33917-324.33920 Repealed. 2006, Act 496, Imd. Eff. Dec. 29, 2006.**

**Compiler's note:** The repealed sections pertained to form of lease, fixing rental value, occupants or claimants in possession of lands, and leasing certain lands.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33921 Rights of lessees subject to certain public rights.**

Sec. 33921. The rights of lessees under this part shall be subject to the paramount right of navigation, hunting, and fishing, which rights are to remain in the general public and in the government as now existing and recognized by law.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33922, 324.33923 Repealed. 2006, Act 496, Imd. Eff. Dec. 29, 2006.**

**Compiler's note:** The repealed sections pertained to possessor or occupant of lands, and application or right to lease.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33924 Definitions.**

Sec. 33924. As used in this part:

(a) "Department" means the department of natural resources unless expressly indicated otherwise.

(b) "Possession", "occupancy", and "improvement" include dredging or ditching, the throwing up of embankments, sheetpiling, filling in, the erection of fences, a boathouse, land made by dredging and filling, or building structures.

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

(d) "Well maintained" means that any structure on the land complies with township building codes and current county and state sanitation codes and part 325 and that the land is adequately protected from erosion.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33925 Repealed. 2006, Act 496, Imd. Eff. Dec. 29, 2006.**

**Compiler's note:** The repealed section pertained to application to lease.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33926 Surveys governing terms of part.**

Sec. 33926. In describing the lands that may be leased under this part, the department shall be governed by maps, plats, and field notes of surveys made by the United States surveyors or by this state.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33927 Ascertainment of rights by department; hearing; powers of department.**

Sec. 33927. The department shall ascertain and decide upon the rights of persons claiming the benefit of this part, and it may hear and decide in a summary manner all matters respecting such applications or claims,



except as otherwise provided in this part, and to that end may compel the attendance of witnesses and receive testimony by deposition or otherwise as may be produced, and determine thereon, according to equity and justice, the validity and just extent of the claim and respective rights of conflicting claimants making application for a lease. It shall cause minutes of the filing of such claims and all its proceedings to be entered in a book kept for that purpose and keep a record of the evidence from which its decisions are made, and it is authorized when it considers it necessary, or upon request of any of the claimants, to employ a stenographer to assist the department. The department may administer oaths, issue subpoenas, and compel the attendance of witnesses and the production of papers upon any hearing before the department under this part. In case of disobedience on the part of any person or persons, or willful failure to appear pursuant to any subpoena issued by the department, or upon refusal of any witnesses to testify regarding any matter pending before the department or to produce books and papers which he or she is required by the department to produce, the circuit court of any county in this state, upon the application of the department, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein, and in addition the department shall have the powers vested in the circuit court to compel witnesses to testify to any matter pending before the department, and each witness who appears before the department by its order or subpoena shall receive for his or her attendance the fees and mileage provided witnesses in civil cases in circuit courts, said fees to be paid by the party calling such witnesses.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33928 Conflicting claims; determination by department; hearing; notice; depositions; appeal.**

Sec. 33928. In all cases where there is a contest or conflict between applicants for a lease to the same piece or parcel of land growing out of a prior occupation or improvements, such conflicting claims shall be determined by the department at a meeting scheduled by the department after notice to each of the claimants of the time and place of hearing, and in such cases depositions may be taken by any claimant in the manner provided for taking depositions in the circuit courts of this state. Any party considering himself or herself aggrieved by any decision of the department refusing to grant him or her a lease under the provisions of this part, whether in case of conflict, contest, or otherwise, has the right of appeal to the circuit court for the county in which the land is situated, and the proceedings to take the appeal and the trial of the appeal in any of those courts shall be in accordance with the statutes providing for appeals from district courts of this state, or the aggrieved party may take such other action at law or in equity as provided by the statutes and laws of this state.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33929 State leased lands; sale or transfer of lease; statement of purpose; approval by department; record of assignment.**

Sec. 33929. (1) Each sale or transfer of a lease shall contain a specific statement of the purpose for which the property leased is to be used by the purchaser or assignee. A sale or transfer of a lease for other than club or residence purposes is not valid unless and until the sale or transfer is approved by the department of environmental quality.

(2) Before selling or transferring a property that is subject to a lease under this part, the parties involved shall apply to the department of environmental quality for approval of the transfer of the lease to the purchaser. The application shall be made on a form provided by the department of environmental quality and shall be accompanied by a fee of \$250.00. Upon approval by the department of environmental quality, an assignment of lease form shall be recorded with the county register of deeds.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33930-324.33932 Repealed. 2006, Act 496, Imd. Eff. Dec. 29, 2006.**

**Compiler's note:** The repealed sections pertained to state leased lands and disposition of money received from leasing.

**Popular name:** Act 451

Popular name: NREPA

#### **324.33933 State leased lands; taxes; assessment.**

Sec. 33933. The lessee's interest in all leases made under this part shall be assessed as real estate by the assessing officer of the township, city, or village in which the lands leased may be located, and the levy and collection of taxes so assessed on said lessee's interest shall be made and collected in the same manner and subject to the law now in force for the levy and collection of taxes upon real estate, and the assessing officers in determining the value of such leasehold interest for taxation purposes shall take into consideration the value of the land together with the improvements on the land.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33934 State leased lands; tax default; procedure for payment; forfeiture of lease; co-owners; partial payment of taxes; certificate of cancellation.**

Sec. 33934. (1) If default is made in the payment of taxes to the treasurer of the township, city, or village in which the lands leased are located, the same shall be returned to the county treasurer according to and subject to the provisions of law for the return and collection of unpaid taxes assessed upon real estate. The treasurer of the township, city, or village, at the same time that he or she makes returns to the county treasurer, shall make and transmit to the department a list of the lands so delinquent for taxes and the amount of taxes delinquent upon each description in the list. The county treasurer shall, at the same time he or she makes his or her return of delinquent lands to the department of treasury, make a similar return to the department of all such leasehold interests, the taxes upon which have not been collected, with a statement of the amount thereof. The county treasurer shall not receive payment of the amount of any taxes assessed upon such leasehold interests; but such taxes when returned delinquent by the township treasurer shall be payable only to the department. The department shall provide suitable books and enter in those books the description of every leasehold interest so returned and the taxes thereon. The person holding such interest in any parcel of this land may pay to the department at any time within 1 year after the same becomes a lien on the premises, the taxes assessed thereon, with interest at the rate of 1/2 of 1% per month or fraction thereof, with 4% as a collection fee, from the first day of March last preceding. However, if the taxes are not paid within this time period, the leasehold interest is forfeited because of the nonpayment of the taxes, and within its discretion the department may release the premises to any person for any term of years not exceeding 99 years, upon that person paying to the department all unpaid taxes on the land, together with such rental as may be determined upon under this part by the department.

(2) If the leasehold interest is owned by 2 or more persons, and any 1 or more of the persons neglect or refuse to pay his or her or their proportionate share of the taxes assessed against the leasehold at the date when the taxes become due and payable, then any 1 or more of the owners may pay his or her or their proportionate share of the taxes, and the county treasurer, in his or her return of delinquent lands to the department, shall indicate partial payments of taxes credited to the owner or owners making them. Any owner not having made payment of his or her proportionate share of the taxes may, at any time within 1 year after the taxes have become a lien on the premises, pay to the department his or her proportionate share of the taxes with interest at the rate of 1% per month or fraction thereof, from the first day of March last preceding. If the proportionate share of taxes of any such owner is not paid within this time period, the interest of the owner in the leasehold is forfeited because of the nonpayment of the taxes, and thereafter within 30 days, such of the owners as have paid their proportionate share of the taxes, upon payment to the department of the amount of the taxes remaining due with interest accrued to the date of forfeiture, shall be entitled to conveyances by the department of the interests in the leasehold that have been forfeited. The interest thus conveyed shall be allotted equally among those owners who shall pay the delinquent taxes with interest as provided in this section.

(3) If default is made by any lessee in the payment of taxes, he or she shall be notified in writing by the department at least 3 months before the date of final forfeiture of the amount due and the penalty for nonpayment and the date upon which forfeiture is to occur.

(4) Upon payment to the department of taxes and interest as provided in this section, the payment amount shall be credited to the county in which such leasehold interests were assessed, in the same manner as taxes and interest are now credited to counties on part-paid state lands.

(5) Immediately upon formal determination by the department that a lease has been forfeited under this part, a certificate of cancellation of the lease shall be executed under the seal of the department and shall be forwarded to the register of deeds of the county where the land is situated. Upon receipt of this certificate, the

register of deeds shall at once cause it to be recorded in a suitable book to be provided by the register of deeds. If the lease is of record in the register of deeds, the register of deeds shall note on the lease the fact that a certificate of cancellation has been issued and shall also note the citation to the record of such certificate.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 356, Imd. Eff. May 23, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33935 State leased lands; nonpayment of taxes; report.**

Sec. 33935. Each county treasurer shall report to the department all descriptions of parcels of property subject to this part that have been returned for nonpayment of taxes, if those taxes have not been paid within 6 months after being returned for nonpayment of taxes. The report shall be made by the treasurer within 30 days after the 6-month period has expired. Land leased or deeded under this part that is returned to state ownership through purchase, gift, devise, lease expiration, or tax reversion shall not be re-leased or sold by the state if that land is not well maintained.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33936-324.33939 Repealed. 2006, Act 496, Imd. Eff. Dec. 29, 2006.**

**Compiler's note:** The repealed sections pertained to unpatented overflowed lands, supervisor of wells, removal of natural materials from or beneath Great Lakes bottomlands, and violation of MCL 324.33938.

**Popular name:** Act 451

**Popular name:** NREPA

## **PART 341 IRRIGATION DISTRICTS**

### **324.34101 Irrigation districts; conditions and limitations for withdrawal of waters from Great Lakes; enforcement of section.**

Sec. 34101. (1) This part is applicable in counties with a population of 400,000 or less to the use of water from the Great Lakes only, which for the purposes of this part include those portions of those lakes and streams tributary to the Great Lakes where the natural water levels are controlled by and at essentially the same water level as the Great Lake involved.

(2) Water shall not be withdrawn from the Great Lakes if it is being used within the confines of an irrigation district under this part which cannot reasonably be expected to benefit agricultural crops or other agricultural operations for improvement of the food supply and water shall not be withdrawn from the Great Lakes under this part at any place or at any time or in any amount or amounts for a single irrigation district or for the sum of all irrigation districts and water from the Great Lakes shall not be stored or transmitted by or for any irrigation district, authorized to be created by this part, in any manner or by any means or with the aid of any dam or other device that does 1 or more of the following:

- (a) Will materially injure other users of the waters of the Great Lakes and connecting channels.
- (b) Will significantly affect the levels of the Great Lakes and prejudice the state in its relations with other states bordering on the Great Lakes.
- (c) Will adversely affect the state in its development and maintenance of fish and wildlife resources.
- (d) Will be detrimental to the health and welfare of the people of the state.

(3) The department shall enforce and implement the conditions and limitations of this section in performing all duties placed upon it by the terms of this part, and for this purpose the department may call upon any officer, board, department, school, university, or other state institution and the officers or employees of any officer, board, department, school, university, or other state institution for assistance considered necessary to implement this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34102 Construction of part.**

Sec. 34102. This part shall be liberally construed to promote the public welfare by irrigating lands, improving the existing water supply for the lands or providing new means or methods of water supply, or constructing and completing dams, reservoirs, canals, drains, structures, mechanical devices, levees, dikes,

barriers and the use of any pumping equipment, pipelines, or other works or a combination of any or all of the same specified in the petition to be utilized for the preservation or operation of any irrigation system constructed, or proposed to be constructed, for the purpose of irrigation.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.34103 Previously organized districts; validity, rights, privileges, and obligations; applicability of part.**

Sec. 34103. This part does not affect the validity of any district organized under the laws of this state prior to July 10, 1967, or its rights in or to property, or any of its rights or privileges of any kind or nature; but the districts are subject to this part so far as practicable. In addition, this part shall not do any of the following:

(a) Affect, impair, or discharge any contract, obligations, lien, or charge for, or upon which, a district was or might become liable or chargeable if former Act No. 205 of the Public Acts of 1967 had not been passed.

(b) Affect the validity of any bonds which had been issued prior to July 10, 1967.

(c) Affect any action pending on July 10, 1967.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.34104 Irrigation district as body corporate; powers; seal; condemnation.**

Sec. 34104. An established irrigation district is a body corporate with power to contract, to sue and be sued, and to hold, manage, and dispose of real and personal property, in addition to any other powers conferred upon it by law, and shall continue in existence until such time as the district is dissolved by operation of law. In addition, each established irrigation district may adopt and use a corporate seal, acquire the right to use of water for irrigation purposes, under plans approved by the department, acquire sites for reservoirs and rights-of-way for drains, canals, and laterals, and exercise the right of condemnation pursuant to the provisions of Act No. 149 of the Public Acts of 1911, being sections 213.21 to 213.25 of the Michigan Compiled Laws, or under the applicable provisions of sections 75 to 84 of the drain code of 1956, Act No. 40 of the Public Acts of 1956, being sections 280.75 to 280.84 of the Michigan Compiled Laws, and shall be considered to be a state agency as that term is used in that act.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.34105 District contracts with federal government, state, and others; approval by department; state's public trust.**

Sec. 34105. As used in this section, "federal government" means the United States and includes any and all agencies of the United States. The irrigation district may contract with the federal government, whereby the federal government will pay the whole or part of the cost of the project or will perform the whole or any part of the work connected with the project, which contract may include any specific terms required by act of congress or federal regulation as a condition for the participation of the federal government. The irrigation district may also contract with the state or any agency of the state or with any person in respect to any matter connected with the construction, operation, or maintenance of any irrigation works or for providing new means of water supply or the improvement of the existing water supply for the lands within the irrigation district. All contracts and agreements executed under this section shall be subject to the approval of the department. Such a contract or agreement or anything in consequence of such a contract or agreement shall not in any manner infringe upon or invade the state's public trust in its waters.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.34106 Grant to United States or irrigation district of right to use rights-of-way in county or intercounty drainage districts; approval; rights of private persons.**

Sec. 34106. Subject to the written assignment, consent, and approval of the drain commissioner administering a county drainage district or the written assignment, consent, and approval of the drainage board of an intercounty drainage district, the county drain commissioner and the drainage board of

intercounty drainage districts may grant unto the United States or to any irrigation district the right to use all the easements and rights-of-way conveyed to their respective drainage district or to any county lying wholly or in part in such districts for the construction, use, and maintenance of any county or intercounty drain by the United States or any irrigation district in connection with any irrigation project undertaken by the irrigation district, solely or in cooperation with the United States or any other federal department or agency. Private rights of persons acquired by reason of the establishment and construction of the drain or part of the drain shall not be interfered with or in any way impaired by the use of the drain for irrigation purposes within the scope of this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.34107 Dams for irrigation; approval.**

Sec. 34107. A dam for irrigation purposes shall not be constructed unless the dam is approved in a manner provided by law.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.34108 Grants of federal, state, and private aid for irrigation projects.**

Sec. 34108. An irrigation district may apply for and accept grants or any aid which the United States government or any agency of the United States government, the state or any of its political subdivisions, or any person may authorize to be made or given in aid of an irrigation project.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.34109 Irrigation districts; petitions for formulation or improvement; contents; circulation; signatures.**

Sec. 34109. (1) Whenever a majority of freeholders owning lands in a proposed irrigation district who represent 1/3 or more of the area of lands within the district, or whenever freeholders owning lands who represent more than 1/2 the area of lands within the district, desire to provide for the irrigation of the lands; to improve the existing water supply for the lands or provide a new water supply system for the lands; to purchase, extend, operate, or maintain constructed irrigation works; or to cooperate with the United States for the assumption as principal or guarantor of indebtedness to the United States on account of district lands, they may file in the office of the county drain commissioner of the county that embraces the largest acreage of the district a petition, hereinafter referred to as the "petition", which shall include all of the following:

(a) The name of the proposed irrigation district.

(b) The necessity of the proposed work, describing the necessity.

(c) The object and purpose of the system proposed to be constructed, together with a general description of the system.

(d) A general description of the lands proposed to be included in the district, accompanying the petition shall be a preliminary engineering report on the feasibility of the project, including a report on the sufficiency of its water supply; the approximate area of irrigable land within the district, including an estimate of the cost of construction.

(e) The names of all freeholders owning lands in the proposed district, when known.

(f) Whether or not the petitioners desire and propose to cooperate with the United States.

(g) A general plea for the organization of the district.

(2) The petitions for the organization of the same district may be circulated and may be filed in more than 1 counterpart and, when filed, shall together be regarded as a single petition having as many signers as there are separate signers on the several petitions filed. All petitions for the organization of the district filed prior to the hearing on the petition shall be considered by the irrigation board the same as if filed with the first petition placed on file, and the signatures contained on those petitions shall be counted in determining whether sufficient persons have signed the petition.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA



**324.34110 Irrigation districts; affidavit of signers of petitions; evidence.**

Sec. 34110. The affidavit of 1 or more of the signers of the petition stating that they have examined it and are acquainted with the locality of the district and that the petition is signed by a sufficient number of persons owning lands in the district may be taken by the irrigation board as sufficient evidence of the facts stated in the petition.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34111 Irrigation districts; lands included.**

Sec. 34111. The lands proposed to be included in any irrigation district need not be contiguous if the benefit of the proposed work in each part will exceed the costs of the proposed work in each part; and lands within any city, village, or township may be included within the limits of any irrigation district if the creation of the irrigation district will benefit the lands within the city, village, or township in any amount equal to or in excess of the amount of assessment for construction against the lands therein.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34112 Irrigation board; creation; membership; chairperson; availability of writings to public; minutes; records and files; member as commissioner of irrigation and public officer; presumption; contested report or action; burden of proof; exception.**

Sec. 34112. (1) There is created for each irrigation district petitioned for under this part an irrigation board to consist of the drain commissioner of each county involved in the project in which the lands of the proposed irrigation district are located, the director of the department of agriculture, and the chairperson of the directors of each soil conservation district involved in the project in which the lands of the proposed irrigation district are located. The director of the department of agriculture may designate a representative from the department of agriculture and the chairperson of the directors of each soil conservation district may designate a representative from the directors of the soil conservation district to serve in their place as members of the irrigation board. The county drain commissioner of the county in which the largest amount of irrigation district land is contained shall serve as chairperson of the irrigation board.

(2) A writing prepared, owned, used, in the possession of, or retained by the irrigation board 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. The chairperson of the irrigation board shall keep minutes of the proceedings of the irrigation board, and records and files of the board shall be kept in his or her office.

(3) A member of the irrigation board shall be known as a commissioner of irrigation. A commissioner of an irrigation district is a public officer. The presumption shall be in favor of the regularity and validity of the official act of a commissioner of irrigation. When a report of the commissioners of an irrigation district or action is contested, the burden of proof shall rest upon the contestant. This subsection shall not apply to an action brought with respect to a failure to comply with Act No. 442 of the Public Acts of 1976, as prescribed in subsection (2), or a failure to comply 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.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34113 Commissioners of irrigation; oath of office; annual accounts.**

Sec. 34113. Before entering upon their duties, commissioners shall take and subscribe the constitutional oath of office. The commissioners shall make a true account of their activities to the department at least once annually.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34114 Control over withdrawals and operations; rules; orders; expenses.**

Sec. 34114. (1) The department shall maintain superintending control over withdrawals and operations of

each irrigation district formed under this part and may promulgate rules to implement this authority.

(2) The department may enforce the limitations and conditions of section 34101 by order prohibiting the further withdrawal of water or by taking other action as is authorized by this part or any other act or law. Each irrigation district shall reimburse the department for any reasonable and necessary expense incurred by the department in maintaining superintending control over that district.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34115 Irrigation board; conducting business at public meeting; notice; calling and notice of meetings; affidavit as proof of mailing; waiver of additional notice; quorum; adjournment; action by board; signing of orders.**

Sec. 34115. (1) The business that the irrigation board may perform shall be conducted at a public meeting of the irrigation board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(2) A meeting of the irrigation board may be called by the chairperson or by 2 members of the irrigation board. In addition to the notice prescribed in subsection (1), notice setting forth the time and place of the meeting shall be sent by certified mail to each member. That notice shall be mailed not less than 5 days before the meeting. The affidavit of the chairperson as to this mailing shall be conclusive proof of the mailing.

(3) The notice of a meeting prescribed in subsection (2) is not required if all members are present. A member of the board may waive the additional mailed notice of a meeting, either before or after the meeting.

(4) A majority of the members of the board constitutes a quorum for the transaction of business, but a lesser number may adjourn the meeting. Unless otherwise provided in this part, an action shall not be taken by the board except by a majority vote of the board's members. The adjournment of the hearing need not be advertised. Each order issued by the irrigation board shall be signed by the chairperson.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34116 Proceedings upon petition for establishment of irrigation districts; meetings; filing and examination of petition; report; expenses and compensation.**

Sec. 34116. (1) Upon receipt of a petition for the establishment of an irrigation district, the county drain commissioner shall call the first meeting of the irrigation board. A copy of the petition and duplicates of all maps and other papers filed with the petition shall be filed with the department at least 4 weeks before the date set for the public hearing on the petition. The department shall examine the petition, maps, and other papers and, if it considers it necessary, examine the proposed district, the irrigation works proposed to be constructed, or the location of the irrigation works to be constructed, and prepare a report covering those features of the proposed irrigation project that relate to section 34101 and other matters as the department considers advisable. The department shall submit the report to the irrigation board at the meeting set for the hearing of the petition. All reasonable and necessary expenses incurred by the department in making the report shall be paid for by the persons signing the petition.

(2) Any additional compensation for services rendered on behalf of an irrigation district by members of the irrigation board in addition to official duties of the members shall be provided by the respective governmental agencies from which the original compensation for other various duties and services rendered are received.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34117 Irrigation board; first meeting; considerations; naming project and irrigation district; determination of sufficiency of petition and practicability of proposed project; objections; hearing; notice; report of department; final order of determination; order of department; eliminating or adding land in irrigation district; rehearing; legal establishment of irrigation district.**

Sec. 34117. (1) The irrigation board at its first meeting shall consider the petition for the project, make a tentative determination as to the sufficiency of the petition and the practicability of the proposed irrigation project, and make a tentative determination of the area to be assessed. The irrigation board shall give a name

to the project and to the irrigation district.

(2) After the irrigation board has made the determination regarding sufficiency of the petition and practicability of the proposed project, it shall set a time and place to hear objections to the proposed irrigation project and the petition for the project, and to consider the matter of assessing the cost of the irrigation project in the affected lands.

(3) In addition to the public notice prescribed in section 34115(1), additional notice of the hearing shall be published twice in the county in not less than 1 newspaper published in the county and designated by the irrigation board, with the first publication not less than 20 days before the hearing. Notice of the hearing shall also be given to property owners in the assessment district pursuant to Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws. The irrigation board may provide a form to be substantially followed in giving this notice.

(4) At the hearing, the department shall submit its report on the petition, and any person is entitled to be heard. After the hearing, the irrigation board shall make a determination as to the sufficiency of the petition, the practicability of the irrigation project, and whether the irrigation project should be constructed. If the department determines that the project should be constructed, it shall issue an appropriate final order of determination.

(5) A final order of determination establishing an irrigation district shall not be issued by the irrigation board until the board has been served with an order by the department stating that the department has determined that the proposed irrigation by the proposed irrigation district, as set forth in the petition, supporting papers, and examinations specified in section 34116, is feasible and within the purpose of this part and that the project can be constructed and operated in a manner that would not violate the conditions and limitations of section 34101. If the department by its order determines that the proposed irrigation district cannot be established without violating a condition or limitation of section 34101, its order shall be final and further action for the formation of the proposed irrigation district shall not be taken by the irrigation board. Land in the irrigation district shall not be eliminated from or added to that land tentatively determined to be assessed without a rehearing after notice, as provided in this section. The irrigation district is legally established after entry of the final order of determination.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34118 Plans, specifications, and costs; estimates of proposed irrigation projects.**

Sec. 34118. The irrigation board shall proceed to secure from a competent engineer plans and specifications and an estimate of the cost of the proposed irrigation project which, when adopted by the board, shall be filed with the chairperson.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34119 Design plans of irrigation works; commissioner's alteration or deviation; approval of department.**

Sec. 34119. The commissioners shall not be confined to the points of location, commencement, routes, or termini of the drains, reservoirs, dams, canals, ditches, pumps, or other work, or the number, extent, or size of the same, as proposed by the petitioners, but shall locate, design, lay out, and plan the same in the manner that they determine is best to promote the public welfare and to benefit the lands of the parties interested with the least damage and greatest benefit to all lands affected thereby. All alterations or deviations in the design plans of the irrigation works shall have the final approval of the department.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34120 Acquisition of lands or rights-of-way.**

Sec. 34120. The irrigation board shall proceed to secure the lands or rights-of-way necessary for the irrigation project. If the lands or rights-of-way cannot be secured by negotiation, then the irrigation board may proceed under section 34104.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

Popular name: NREPA

**324.34121 Advertisement for bids for construction; acceptance and rejection of bids; readvertisement.**

Sec. 34121. The irrigation board shall advertise for bids for construction of the improvements requested in the petition. The contract shall be let to the lowest bidder in accordance with the statutory provisions applicable to award of public contracts, and the irrigation board has the right to reject any and all bids and readvertise the bids.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34122 Costs of irrigation district; computation; approval.**

Sec. 34122. Within 10 days after the letting of contracts, or, in case of an appeal, then immediately after the appeal has been decided, the chairperson of the irrigation board shall make a computation of cost of a project under this part, which shall include all preliminary costs, the cost of construction of the improvement, establishment of the special assessment district, the preparation of the tax roll, notices, advertising, printing, financing, legal, professional, engineering, inspection, condemnation expenses, interest on the bonds for the first year if bonds are to be issued and an amount not to exceed 10% of the gross sum to cover contingent expenses, and all other administrative costs incidental to making of the improvement or establishment of the irrigation special assessment district. The chairperson shall submit the computation of cost to the irrigation board for its approval, and, when the computation of cost is approved by the board or amended and approved by the board, it shall become the final computation of cost for the irrigation district.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34123 Assessment roll; description of lands benefited; apportionment of costs; objections.**

Sec. 34123. The chairperson of the irrigation board, under the direction of the board, shall make out an assessment roll, entering and describing on the assessment roll all the lots, premises, and parcels of land to be assessed, including on the assessment roll all lands benefited by the construction of the irrigation improvement. The assessments shall be based upon benefits to be derived from the proposed irrigation improvement. The irrigation board shall tentatively establish the percentage of the cost of the irrigation improvement which is to be borne by each of the parcels of land assessed on the special assessment roll. After the tentative apportionments and assessment roll is made, the irrigation board shall set a time and place when and where they will meet and hear any objections to the roll.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34124 Notice of hearing; publication; form.**

Sec. 34124. Notice of hearing shall be given as prescribed in section 34115 and Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws, and also by publication at least twice in a newspaper published and of general circulation in the county, the first publication to be at least 20 days before the time of the hearing. The irrigation board shall provide a form to be substantially followed in giving of the notice.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34125 Hearing on objections; scope of review; equalization.**

Sec. 34125. At the hearing, the irrigation board shall hear the proofs and allegations of all parties interested, shall carefully reconsider and review the description of land comprised within the irrigation improvement special assessment district, the several descriptions, and the apportionment of benefits, and shall define and equalize the district as may seem just and equitable.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

Popular name: NREPA

**324.34126 Special assessment rolls; final orders and confirmation; endorsement; memorandum of installments; conclusiveness.**

Sec. 34126. After the hearing, the irrigation board shall enter its final order of apportionment and order of confirmation of the roll and shall make an endorsement upon the roll showing the date of confirmation and when the amount to be raised is to be payable. If the amount is to be payable in more than 1 installment, the irrigation board shall enter on the roll a memorandum of the installments and of the years when the installments shall be spread and shall add a certificate in writing of the determination whether the taxes assessed for benefits shall be paid in 1 or more years. The special assessment rolls shall be dated and signed by the irrigation board and filed on or before the last Wednesday in September of each year in the office of the county clerk of the counties involved. When any improvement special assessment roll is confirmed by the irrigation board, it shall be final and conclusive.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34127 Irrigation special assessments liens.**

Sec. 34127. From the date of confirmation of the special assessment roll, all irrigation special assessments constitute a lien upon the respective lots or parcels assessed and, when assessed, shall be charged against the person to whom assessed until paid.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34128 Tax assessment rolls; contents; permanent installment payments.**

Sec. 34128. The chairperson of the irrigation board, at the direction of the irrigation board, shall prepare a tax assessment roll in each year for the collection of taxes for the current year and shall certify it to the county clerk on or before the first day of the annual meeting of the county board of commissioners. In each roll, he or she shall add to the amount to be collected interest on all unpaid installments to the date of tax collection. To the roll for the last year, he or she shall add a further amount, if any, as may be necessary, together with outstanding uncollected taxes, to pay all outstanding bonds and interest on the bonds to maturity. If the roll is made payable in more than 1 installment, a permanent assessment roll may be maintained in the office of the county treasurer, subject to the direction of the board of county auditors, in counties having such a board, and of the county board of commissioners in other counties, showing the total cost, the number of installments, and the amount of each annual assessment, together with interest charges on the assessment, which shall be carried in a separate column. If the roll is made payable in more than 1 installment, and the total amount of any assessment is \$10.00 or less, exclusive of interest, then the assessment shall be payable in 1 installment; but if the assessment exceeds \$10.00 and is made payable in more than 1 installment, then no installment, exclusive of interest, shall be less than \$10.00, excepting the final installment, which shall be payable in the amount of the actual balance.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34129 Spread of special assessments on local tax rolls; orders by county board of commissioners.**

Sec. 34129. The county board of commissioners of the counties involved shall order the spread of all irrigation special assessments on the local tax rolls by the local tax assessing officials pursuant to sections 36 to 38 of the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.36 to 211.38 of the Michigan Compiled Laws.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34130 Spread of special assessments on local tax rolls; duties of local assessing officers.**

Sec. 34130. The supervisor or the village or city assessor shall spread on his or her roll the total amount of



all irrigation special assessment taxes determined by the irrigation board and approved by the county board of commissioners to be assessed upon the county, township, city, or village tax roll for the year in which the same was assessed and extending the tax in the same column with the general county, township, city, or village tax. In villages or cities where the municipal taxes are assessed and collected prior to the October meeting of the county board of commissioners, all taxes ordered to be spread against the municipalities shall be spread during the calendar year following the action by the county board of commissioners. The supervisor, assessor, or tax levying official shall spread upon the roll, separately and immediately following the other descriptions, all tracts or parcels of land specified by the irrigation board to be assessed for benefits, and shall place opposite each description, in a column marked "(giving the name or number)..... irrigation special assessment taxes", the amount of taxes apportioned on that tract or parcel of land, as certified to him or her by the county clerk.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.34131 Special assessment taxes; interest, charges, collections, disbursement; defense of collector; limitation on actions; payments under protest; liens.**

Sec. 34131. All irrigation special assessment taxes assessed under this part shall be subject to the same interest and charges, and shall be collected in the same manner, as state and other general taxes are collected, and collecting officers are vested with the same power and authority in the collection of the taxes as are or may be conferred by law for collecting general taxes. Irrigation special assessment taxes, when collected, shall be returned to the county treasurer to be disbursed by him or her. If a suit is brought against the collector arising out of the collection of an irrigation special assessment tax, the county shall defend the collector in the same manner that he or she has the right to be defended in the collection of general taxes. A suit shall not be instituted to recover any special assessment tax or money paid or property sold therefor, or for damages on account thereof, unless brought within 30 days from the time of payment of the money to, or sale of the property by, the collecting officer. If the tax is paid under protest, the reasons for the protest shall be specified, and the same procedure observed as is required by the general tax law. All taxes levied under this part, with all lawful costs, interest, and charges, shall be and remain a perpetual lien upon the lands upon which they are assessed, and a personal claim against the owner of the lands until they are paid. If the taxes levied by the special assessment irrigation district are not collected by the treasurer of a participating municipality, they shall be returned by him or her, together with the lands upon which they were levied, to the county treasurer in the same return, at the same time, and in the same manner, in every respect, naming in each case the particular irrigation district, as lands are returned for state, county, and township taxes, and the taxes shall follow the lands, the same as all other taxes, and all the general provisions of law for enforcing the payment of township, county, and state taxes shall apply to irrigation special assessment taxes and to the lands returned delinquent for those taxes, in the same manner and with the same effect.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.34132 Additional pro rata assessments; limitations.**

Sec. 34132. If the assessments in any special assessment roll prove insufficient for any reason, including the noncollection of the assessments, to pay for the improvement for which they were made or to pay the principal and interest on the bonds issued in anticipation of the collection of the assessments, then the irrigation board shall make additional pro rata assessments to supply the deficiency, but the total amount assessed against any parcel of land shall not exceed the value of the benefits received from the improvement.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.34133 Invalid assessments; validation procedure; payments applied to reassessments.**

Sec. 34133. If, in the opinion of the irrigation board, a special assessment is invalid by reason of irregularities or informalities in the proceedings, or if any court of competent jurisdiction adjudges an assessment illegal, the irrigation board, whether the improvement has been made or not and whether any part of the assessment has been paid or not, may proceed from the last step at which the proceedings were legal and cause a new assessment to be made for the same purpose for which the former assessment was made. All proceedings on the reassessment and for the collection of the reassessment shall be conducted in the same

manner as provided for the original assessment. Whenever an assessment or any part of an assessment levied upon any premises has been set aside in such a manner, if the assessment or part of an assessment has been paid and not refunded, the payment made shall be applied upon the reassessment.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34134 Irrigation orders to pay charges and to pay easements or rights-of-way; installments; drawing orders on first and succeeding years' assessments; limitations; certification by treasurer.**

Sec. 34134. The irrigation board of each special assessment district may issue irrigation orders for the payment of all charges reflected by the computation of costs upon the irrigation fund of each particular district. Irrigation taxes shall not be assessed for benefits received that are to be paid by irrigation orders in excess of 10 annual installments. All irrigation orders for the payment for easements or rights-of-way shall be paid out of the first year's taxes, and the balance of the first year's taxes shall be applied toward payment of the irrigation construction contracts. For the balance due upon such contracts, the irrigation board shall draw irrigation orders payable out of each succeeding year's assessment. An irrigation board shall not draw orders payable in any 1 year for a larger amount than 90% of that year's assessment. Irrigation orders shall be ordered to be paid by the irrigation board only after a certification by the treasurer of the irrigation district that there are sufficient funds in the irrigation district fund to pay the order. The county treasurers of the counties involved in irrigation districts shall keep a record of all receipts and disbursements of all irrigation districts in their respective counties.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34135 Interest on bonds; board of commissioners; resolution pledging full faith and credit of county to pay.**

Sec. 34135. The county board of commissioners of the county involved by a resolution adopted by a 2/3 vote of its members may pledge the full faith and credit of the county for the prompt payment of the interest on the bonds or evidences of indebtedness issued by the respective irrigation districts under this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34136 Operating and maintaining property of irrigation district; fixing and collecting water charges; approval of charges; charges for water services as lien on affected lands; certification of delinquent charges; entering charges on tax roll; enforcement; exaction of other charges; future expenses; assessment; notice of hearing.**

Sec. 34136. (1) The irrigation board shall operate and maintain the property of the irrigation district.

(2) The irrigation board may fix and collect water charges to cover the cost of the operation and maintenance of physical structures and administrative expenses of the district in connection with the transportation, impoundment, and utilization of water for irrigation purposes. The charges shall be approved by the majority vote of the irrigation board and shall be made to each user of water.

(3) Charges for water services furnished to a user or to a landowner shall be a lien on the affected lands from the date the charges are due. Charges delinquent for 6 months or more shall be certified annually to the proper tax assessing officer or agency, who shall enter the charges upon the next tax roll against the premises to which the services have been rendered, and the charges shall be collected and the lien shall be enforced in the same manner as provided for the collection of taxes assessed upon the tax roll and the enforcement of the lien. The time and manner of certification and other procedures regarding the collection of the charges and the enforcement of the lien shall be prescribed by the irrigation board in cooperation with the governing bodies of the public corporations in which the lands are located. Instead of or in addition to levying water charges for the operation and maintenance of the properties of the irrigation district, the irrigation board, under the same conditions and for the same purpose, may exact connection, readiness to serve, availability, or service charges to be paid by the users or owners of land utilizing irrigation water for irrigation purposes.

(4) Future necessary expenses incurred in the administration and operation of the district and its properties may be assessed not less than once every 3 years on the basis of benefits derived after notice of the hearing on

the maintenance assessment roll is given 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, and Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34137 Attack on orders; proceedings by writ of superintending control; legality of irrigation special assessment district and project; assessments; actions.**

Sec. 34137. (1) Except as prescribed in subsection (2), the final order of determination, the order of apportionment of benefits, or the order confirming the special assessment roll shall not be subject to attack in a court except by proceedings by writ of superintending control brought within 20 days after the filing of the order in the office of the chairperson of the irrigation board issuing the order. If a proceeding is not brought within the time prescribed, the irrigation special assessment district and project shall be considered to have been legally established, and the legality of the irrigation special assessment district and project and the assessments for the district and project shall not be questioned in an action at law or in equity.

(2) This section shall not prohibit the bringing of an action pursuant to the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34138 Suspension of water delivery; delinquent irrigation taxes; right-of-way for laterals; condemnation; payment.**

Sec. 34138. The irrigation board may, by the adoption of an appropriate order, provide for the suspension of water delivery to any land in the district upon which the irrigation taxes levied and assessed remain due and unpaid for 2 years. The irrigation board shall make all arrangements for right-of-way for laterals from the main drain or canal to each tract of land subject to assessment, and when necessary the board shall condemn to procure right-of-way for laterals and make such rules in regard to the payment for the right-of-way as it considers just and equitable.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34139 Irrigation boards; powers and duties.**

Sec. 34139. The irrigation board shall manage and conduct the business affairs of the district, make and execute all necessary contracts, employ agents, officers, and employees as may be required and prescribe their duties, establish equitable orders and rules for the distribution and use of water among owners of such lands, and generally perform all acts as are necessary to fully implement this part. The orders and rules with respect to the irrigation district shall be printed in convenient form for distribution to the freeholders in the irrigation district.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34140 Right of entry upon land to survey; location of drains; acquisition of property; reservoirs for storage or transfers of Great Lakes water.**

Sec. 34140. The irrigation board and its agents and employees may enter upon any land within the district to make surveys, and may locate the line of any drain or canal and the necessary branches of that location. The irrigation board may acquire, either by purchase or condemnation, all lands and other property necessary for the construction, use, maintenance, repair, and improvement of any canal, drain or drains, and lands for reservoirs or dams, for the storage of water, and for all necessary appurtenances thereto. The board may acquire by purchase or condemnation any irrigation works, dams, drains, canals, pumping equipment, pumps, or reservoirs for the use of the district. The irrigation board may construct the necessary dams, reservoirs, and works for the storage or transfer of Great Lakes water for the district, and may perform any lawful act necessary to furnish water to each landowner in the district for irrigation purposes.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34141 Advancement of money to pay costs; reimbursement by irrigation special assessment district; obligations.**

Sec. 34141. Any person may advance money for the payment of any part of the cost of a project and shall be reimbursed by the irrigation special assessment district, with or without interest as may be agreed, when funds are available for that purpose. The obligation of the irrigation special assessment district to make the reimbursement may be evidenced by a contract or note, which contract or note may pledge the full faith and credit of the irrigation special assessment district and may be made payable out of the assessments made against properties in the irrigation special assessment district, out of the proceeds of bonds issued by the irrigation special assessment district pursuant to this part, or out of any other available funds, but the contract or note is subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 220, Imd. Eff. Apr. 29, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34142 District accounts; duties of county treasurer; expenditure from district funds; bond interest; funds transfer.**

Sec. 34142. The county treasurers of the counties in which the irrigation district is located shall carry all accounts and items pertaining thereto as a separate account upon the books of their office. A record shall be kept of the amount of money paid from the irrigation district funds for the use and benefit of any irrigation district and, upon payment to the county treasurer of taxes assessed by the irrigation district, the county treasurer shall pay for the outstanding interest on bonds issued out of the taxes received or shall transfer the excess of funds to the irrigation district fund for the use and benefit of the irrigation district.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34143 Irrigation district funds; deposit; interest; use.**

Sec. 34143. The irrigation district funds shall be deposited by the county treasurer in a bank of the county in accordance with the general laws of this state, and interest so received shall belong to the irrigation district fund. Money collected or appropriated for an individual irrigation special assessment district fund shall be used solely for the use and benefit of the irrigation district for which it was raised or received.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34144 Irrigation district funds; county treasurers as custodians; deputies; bond; orders for payment.**

Sec. 34144. The county treasurer shall be the custodian of the funds of the irrigation district. He or she may designate 1 or more of his or her deputies who may act for him or her in the performance of any of his or her duties under this section. The irrigation board may require the county treasurer and any deputy county treasurer, so designated, to furnish a bond payable to the irrigation district, in addition to any bond payable to the county, conditioned upon the faithful discharge of his or her duties in respect to money belonging to the irrigation district, the premium on the bond to be paid by the irrigation district. Money held by the treasurer shall be paid out only upon order of the irrigation board, except that an order shall not be required for the payment of principal and interest on bonds.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34145 Revolving fund to pay for preliminary costs; assessment of preliminary costs; repayment of fund.**

Sec. 34145. The county board of commissioners in which an irrigation district is proposed to be formed may provide for an appropriation to create a revolving fund to pay for the preliminary costs of irrigation improvement projects within the county. The preliminary costs shall be assessed to the property owners in the assessment district by the irrigation board after notice of the hearing is given as prescribed in section 34115

and Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws. The preliminary costs shall be repaid to the fund if the project is not finally constructed. The preliminary costs shall be repaid to the fund when a project is constructed out of the first bond proceeds, taxes, or assessments received.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34146 Borrowing money; issuing bonds; anticipating collection of special assessments; amount; applicability of law.**

Sec. 34146. The irrigation board may borrow money and issue the bonds of the special assessment district for that money in anticipation of the collection of special assessments to defray the cost of any improvement made under this part after the special assessment roll has been confirmed. The bonds shall not exceed the amount of the special assessments in anticipation of the collection of which they are issued. The issuance of special assessment bonds shall be governed by the general laws of this state applicable to the issuance of special assessment bonds and in accordance with the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. Bonds may be issued in anticipation of the collection of special assessments levied in respect to 2 or more public improvements, but no special assessment district shall be compelled to pay the obligation of any other special assessment district.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 221, Imd. Eff. Apr. 29, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

PART 342

GREAT LAKES—ST. LAWRENCE RIVER BASIN WATER RESOURCES COMPACT

**324.34201 Great Lakes-St. Lawrence River Basin Water Resources Compact.**

Sec. 34201. The Great Lakes-St. Lawrence River Basin Water Resources Compact is hereby ratified, enacted into law, and entered into by this state as a party as follows:

AGREEMENT

Section 1. The states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the Commonwealth of Pennsylvania hereby solemnly covenant and agree with each other, upon enactment of concurrent legislation by the respective state legislatures and consent by the Congress of the United States as follows:

GREAT LAKES—ST. LAWRENCE RIVER BASIN WATER RESOURCES COMPACT

ARTICLE 1

SHORT TITLE, DEFINITIONS, PURPOSES AND DURATION

Section 1.1. Short Title. This act shall be known and may be cited as the "Great Lakes—St. Lawrence River Basin Water Resources Compact."

Section 1.2. Definitions. For the purposes of this Compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

Adaptive Management means a Water resources management system that provides a systematic process for evaluation, monitoring and learning from the outcomes of operational programs and adjustment of policies, plans and programs based on experience and the evolution of scientific knowledge concerning Water resources and Water Dependent Natural Resources.

Agreement means the Great Lakes—St. Lawrence River Basin Sustainable Water Resources Agreement.

Applicant means a Person who is required to submit a Proposal that is subject to management and regulation under this Compact. Application has a corresponding meaning.

Basin or Great Lakes—St. Lawrence River Basin means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivières, Québec within the jurisdiction of the Parties.

Basin Ecosystem or Great Lakes—St. Lawrence River Basin Ecosystem means the interacting components of air, land, Water and living organisms, including humankind, within the Basin.

Community within a Straddling County means any incorporated city, town or the equivalent thereof, that is located outside the Basin but wholly within a County that lies partly within the Basin and that is not a Straddling Community.

Compact means this Compact.

Consumptive Use means that portion of the Water Withdrawn or withheld from the Basin that is lost or otherwise not returned to the Basin due to evaporation, incorporation into Products, or other processes.



Council means the Great Lakes—St. Lawrence River Basin Water Resources Council, created by this Compact.

Council Review means the collective review by the Council members as described in Article 4 of this Compact.

County means the largest territorial division for local government in a State. The County boundaries shall be defined as those boundaries that exist as of December 13, 2005.

Cumulative Impacts mean the impact on the Basin Ecosystem that results from incremental effects of all aspects of a Withdrawal, Diversion or Consumptive Use in addition to other past, present, and reasonably foreseeable future Withdrawals, Diversions and Consumptive Uses regardless of who undertakes the other Withdrawals, Diversions and Consumptive Uses. Cumulative Impacts can result from individually minor but collectively significant Withdrawals, Diversions and Consumptive Uses taking place over a period of time.

Decision-Making Standard means the decision-making standard established by Section 4.11 for Proposals subject to management and regulation in Section 4.10.

Diversion means a transfer of Water from the Basin into another watershed, or from the watershed of one of the Great Lakes into that of another by any means of transfer, including but not limited to a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, a tanker ship, tanker truck or rail tanker but does not apply to Water that is used in the Basin or a Great Lake watershed to manufacture or produce a Product that is then transferred out of the Basin or watershed. Divert has a corresponding meaning.

Environmentally Sound and Economically Feasible Water Conservation Measures mean those measures, methods, technologies or practices for efficient water use and for reduction of water loss and waste or for reducing a Withdrawal, Consumptive Use or Diversion that *i*) are environmentally sound, *ii*) reflect best practices applicable to the water use sector, *iii*) are technically feasible and available, *iv*) are economically feasible and cost effective based on an analysis that considers direct and avoided economic and environmental costs and *v*) consider the particular facilities and processes involved, taking into account the environmental impact, age of equipment and facilities involved, the processes employed, energy impacts and other appropriate factors.

Exception means a transfer of Water that is excepted under Section 4.9 from the prohibition against Diversions in Section 4.8.

Exception Standard means the standard for Exceptions established in Section 4.9.4.

Intra-Basin Transfer means the transfer of Water from the watershed of one of the Great Lakes into the watershed of another Great Lake.

Measures means any legislation, law, regulation, directive, requirement, guideline, program, policy, administrative practice or other procedure.

New or Increased Diversion means a new Diversion, an increase in an existing Diversion, or the alteration of an existing Withdrawal so that it becomes a Diversion.

New or Increased Withdrawal or Consumptive Use means a new Withdrawal or Consumptive Use or an increase in an existing Withdrawal or Consumptive Use.

Originating Party means the Party within whose jurisdiction an Application or registration is made or required.

Party means a State party to this Compact.

Person means a human being or a legal person, including a government or a nongovernmental organization, including any scientific, professional, business, non-profit, or public interest organization or association that is neither affiliated with, nor under the direction of a government.

Product means something produced in the Basin by human or mechanical effort or through agricultural processes and used in manufacturing, commercial or other processes or intended for intermediate or end use consumers. *(i)* Water used as part of the packaging of a Product shall be considered to be part of the Product. *(ii)* Other than Water used as part of the packaging of a Product, Water that is used primarily to transport materials in or out of the Basin is not a Product or part of a Product. *(iii)* Except as provided in *(i)* above, Water which is transferred as part of a public or private supply is not a Product or part of a Product. *(iv)* Water in its natural state such as in lakes, rivers, reservoirs, aquifers, or water basins is not a Product.

Proposal means a Withdrawal, Diversion or Consumptive Use of Water that is subject to this Compact.

Province means Ontario or Québec.

Public Water Supply Purposes means water distributed to the public through a physically connected system of treatment, storage and distribution facilities serving a group of largely residential customers that may also serve industrial, commercial, and other institutional operators. Water Withdrawn directly from the Basin and not through such a system shall not be considered to be used for Public Water Supply Purposes.

Regional Body means the members of the Council and the Premiers of Ontario and Québec or their designee as established by the Agreement.

Regional Review means the collective review by the Regional Body as described in Article 4 of this Compact.

Source Watershed means the watershed from which a Withdrawal originates. If Water is Withdrawn directly from a Great Lake or from the St. Lawrence River, then the Source Watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively. If Water is Withdrawn from the watershed of a stream that is a direct tributary to a Great Lake or a direct tributary to the St. Lawrence River, then the Source Watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively, with a preference to the direct tributary stream watershed from which it was Withdrawn.

Standard of Review and Decision means the Exception Standard, Decision-Making Standard and reviews as outlined in Article 4 of this Compact.

State means one of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio or Wisconsin or the Commonwealth of Pennsylvania.

Straddling Community means any incorporated city, town or the equivalent thereof, wholly within any County that lies partly or completely within the Basin, whose corporate boundary existing as of the effective date of this Compact, is partly within the Basin or partly within two Great Lakes watersheds.

Technical Review means a detailed review conducted to determine whether or not a Proposal that requires Regional Review under this Compact meets the Standard of Review and Decision following procedures and guidelines as set out in this Compact.

Water means ground or surface water contained within the Basin.

Water Dependent Natural Resources means the interacting components of land, Water and living organisms affected by the Waters of the Basin.

Waters of the Basin or Basin Water means the Great Lakes and all streams, rivers, lakes, connecting channels and other bodies of water, including tributary groundwater, within the Basin.

Withdrawal means the taking of water from surface water or groundwater. Withdraw has a corresponding meaning.

#### Section 1.3. Findings and Purposes.

The legislative bodies of the respective Parties hereby find and declare:

##### 1. Findings:

- a. The Waters of the Basin are precious public natural resources shared and held in trust by the States;
- b. The Waters of the Basin are interconnected and part of a single hydrologic system;
- c. The Waters of the Basin can concurrently serve multiple uses. Such multiple uses include municipal, public, industrial, commercial, agriculture, mining, navigation, energy development and production, recreation, the subsistence, economic and cultural activities of native peoples, Water quality maintenance, and the maintenance of fish and wildlife habitat and a balanced ecosystem. And, other purposes are encouraged, recognizing that such uses are interdependent and must be balanced;
- d. Future Diversions and Consumptive Uses of Basin Water resources have the potential to significantly impact the environment, economy and welfare of the Great Lakes—St. Lawrence River region;
- e. Continued sustainable, accessible and adequate Water supplies for the people and economy of the Basin are of vital importance; and,
- f. The Parties have a shared duty to protect, conserve, restore, improve and manage the renewable but finite Waters of the Basin for the use, benefit and enjoyment of all their citizens, including generations yet to come. The most effective means of protecting, conserving, restoring, improving and managing the Basin Waters is through the joint pursuit of unified and cooperative principles, policies and programs mutually agreed upon, enacted and adhered to by all Parties.

##### 2. Purposes:

- a. To act together to protect, conserve, restore, improve and effectively manage the Waters and Water Dependent Natural Resources of the Basin under appropriate arrangements for intergovernmental cooperation and consultation because current lack of full scientific certainty should not be used as a reason for postponing measures to protect the Basin Ecosystem;
- b. To remove causes of present and future controversies;
- c. To provide for cooperative planning and action by the Parties with respect to such Water resources;
- d. To facilitate consistent approaches to Water management across the Basin while retaining State management authority over Water management decisions within the Basin;
- e. To facilitate the exchange of data, strengthen the scientific information base upon which decisions are made and engage in consultation on the potential effects of proposed Withdrawals and losses on the Waters and Water Dependent Natural Resources of the Basin;
- f. To prevent significant adverse impacts of Withdrawals and losses on the Basin's ecosystems and

watersheds;

g. To promote interstate and State-Provincial comity; and,

h. To promote an Adaptive Management approach to the conservation and management of Basin Water resources, which recognizes, considers and provides adjustments for the uncertainties in, and evolution of, scientific knowledge concerning the Basin's Waters and Water Dependent Natural Resources.

#### Section 1.4. Science.

1. The Parties commit to provide leadership for the development of a collaborative strategy with other regional partners to strengthen the scientific basis for sound Water management decision making under this Compact.

2. The strategy shall guide the collection and application of scientific information to support:

a. An improved understanding of the individual and Cumulative Impacts of Withdrawals from various locations and Water sources on the Basin Ecosystem and to develop a mechanism by which impacts of Withdrawals may be assessed;

b. The periodic assessment of Cumulative Impacts of Withdrawals, Diversions and Consumptive Uses on a Great Lake and St. Lawrence River watershed basis;

c. Improved scientific understanding of the Waters of the Basin;

d. Improved understanding of the role of groundwater in Basin Water resources management; and,

e. The development, transfer and application of science and research related to Water conservation and Water use efficiency.

## ARTICLE 2 ORGANIZATION

### Section 2.1. Council Created.

The Great Lakes—St. Lawrence River Basin Water Resources Council is hereby created as a body politic and corporate, with succession for the duration of this Compact, as an agency and instrumentality of the governments of the respective Parties.

### Section 2.2. Council Membership.

The Council shall consist of the Governors of the Parties, ex officio.

### Section 2.3. Alternates.

Each member of the Council shall appoint at least one alternate who may act in his or her place and stead, with authority to attend all meetings of the Council and with power to vote in the absence of the member. Unless otherwise provided by law of the Party for which he or she is appointed, each alternate shall serve during the term of the member appointing him or her, subject to removal at the pleasure of the member. In the event of a vacancy in the office of alternate, it shall be filled in the same manner as an original appointment for the unexpired term only.

### Section 2.4. Voting.

1. Each member is entitled to one vote on all matters that may come before the Council.

2. Unless otherwise stated, the rule of decision shall be by a simple majority.

3. The Council shall annually adopt a budget for each fiscal year and the amount required to balance the budget shall be apportioned equitably among the Parties by unanimous vote of the Council. The appropriation of such amounts shall be subject to such review and approval as may be required by the budgetary processes of the respective Parties.

4. The participation of Council members from a majority of the Parties shall constitute a quorum for the transaction of business at any meeting of the Council.

### Section 2.5. Organization and Procedure.

The Council shall provide for its own organization and procedure, and may adopt rules and regulations governing its meetings and transactions, as well as the procedures and timeline for submission, review and consideration of Proposals that come before the Council for its review and action. The Council shall organize, annually, by the election of a Chair and Vice Chair from among its members. Each member may appoint an advisor, who may attend all meetings of the Council and its committees, but shall not have voting power. The Council may employ or appoint professional and administrative personnel, including an Executive Director, as it may deem advisable, to carry out the purposes of this Compact.

### Section 2.6. Use of Existing Offices and Agencies.

It is the policy of the Parties to preserve and utilize the functions, powers and duties of existing offices and agencies of government to the extent consistent with this Compact. Further, the Council shall promote and aid the coordination of the activities and programs of the Parties concerned with Water resources management in the Basin. To this end, but without limitation, the Council may:

1. Advise, consult, contract, assist or otherwise cooperate with any and all such agencies;

2. Employ any other agency or instrumentality of any of the Parties for any purpose; and,

3. Develop and adopt plans consistent with the Water resources plans of the Parties.

#### Section 2.7. Jurisdiction.

The Council shall have, exercise and discharge its functions, powers and duties within the limits of the Basin. Outside the Basin, it may act in its discretion, but only to the extent such action may be necessary or convenient to effectuate or implement its powers or responsibilities within the Basin and subject to the consent of the jurisdiction wherein it proposes to act.

#### Section 2.8. Status, Immunities and Privileges.

1. The Council, its members and personnel in their official capacity and when engaged directly in the affairs of the Council, its property and its assets, wherever located and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by the Parties, except to the extent that the Council may expressly waive its immunity for the purposes of any proceedings or by the terms of any contract.

2. The property and assets of the Council, wherever located and by whomsoever held, shall be considered public property and shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

3. The Council, its property and its assets, income and the operations it carries out pursuant to this Compact shall be immune from all taxation by or under the authority of any of the Parties or any political subdivision thereof; provided, however, that in lieu of property taxes the Council may make reasonable payments to local taxing districts in annual amounts which shall approximate the taxes lawfully assessed upon similar property.

#### Section 2.9. Advisory Committees.

The Council may constitute and empower advisory committees, which may be comprised of representatives of the public and of federal, State, tribal, county and local governments, water resources agencies, water-using industries and sectors, water-interest groups and academic experts in related fields.

### ARTICLE 3

#### GENERAL POWERS AND DUTIES

##### Section 3.1. General.

The Waters and Water Dependent Natural Resources of the Basin are subject to the sovereign right and responsibilities of the Parties, and it is the purpose of this Compact to provide for joint exercise of such powers of sovereignty by the Council in the common interests of the people of the region, in the manner and to the extent provided in this Compact. The Council and the Parties shall use the Standard of Review and Decision and procedures contained in or adopted pursuant to this Compact as the means to exercise their authority under this Compact. The Council may revise the Standard of Review and Decision, after consultation with the Provinces and upon unanimous vote of all Council members, by regulation duly adopted in accordance with Section 3.3 of this Compact and in accordance with each Party's respective statutory authorities and applicable procedures. The Council shall identify priorities and develop plans and policies relating to Basin Water resources. It shall adopt and promote uniform and coordinated policies for Water resources conservation and management in the Basin.

##### Section 3.2. Council Powers.

The Council may: plan; conduct research and collect, compile, analyze, interpret, report and disseminate data on Water resources and uses; forecast Water levels; conduct investigations; institute court actions; design, acquire, construct, reconstruct, own, operate, maintain, control, sell and convey real and personal property and any interest therein as it may deem necessary, useful or convenient to carry out the purposes of this Compact; make contracts; receive and accept such payments, appropriations, grants, gifts, loans, advances and other funds, properties and services as may be transferred or made available to it by any Party or by any other public or private agency, corporation or individual; and, exercise such other and different powers as may be delegated to it by this Compact or otherwise pursuant to law, and have and exercise all powers necessary or convenient to carry out its express powers or which may be reasonably implied therefrom.

##### Section 3.3. Rules and Regulations.

1. The Council may promulgate and enforce such rules and regulations as may be necessary for the implementation and enforcement of this Compact. The Council may adopt by regulation, after public notice and public hearing, reasonable Application fees with respect to those Proposals for Exceptions that are subject to Council review under Section 4.9. Any rule or regulation of the Council, other than one which deals solely with the internal management of the Council or its property, shall be adopted only after public notice and hearing.

2. Each Party, in accordance with its respective statutory authorities and applicable procedures, may adopt and enforce rules and regulations to implement and enforce this Compact and the programs adopted by such

Party to carry out the management programs contemplated by this Compact.

#### Section 3.4. Program Review and Findings.

1. Each Party shall submit a report to the Council and the Regional Body detailing its Water management and conservation and efficiency programs that implement this Compact. The report shall set out the manner in which Water Withdrawals are managed by sector, Water source, quantity or any other means, and how the provisions of the Standard of Review and Decision and conservation and efficiency programs are implemented. The first report shall be provided by each Party one year from the effective date of this Compact and thereafter every 5 years.

2. The Council, in cooperation with the Provinces, shall review its Water management and conservation and efficiency programs and those of the Parties that are established in this Compact and make findings on whether the Water management program provisions in this Compact are being met, and if not, recommend options to assist the Parties in meeting the provisions of this Compact. Such review shall take place:

- a. 30 days after the first report is submitted by all Parties; and,
- b. Every five years after the effective date of this Compact; and,
- c. At any other time at the request of one of the Parties.

3. As one of its duties and responsibilities, the Council may recommend a range of approaches to the Parties with respect to the development, enhancement and application of Water management and conservation and efficiency programs to implement the Standard of Review and Decision reflecting improved scientific understanding of the Waters of the Basin, including groundwater, and the impacts of Withdrawals on the Basin Ecosystem.

### ARTICLE 4

#### WATER MANAGEMENT AND REGULATION

##### Section 4.1. Water Resources Inventory, Registration and Reporting.

1. Within five years of the effective date of this Compact, each Party shall develop and maintain a Water resources inventory for the collection, interpretation, storage, retrieval exchange, and dissemination of information concerning the Water resources of the Party, including, but not limited to, information on the location, type, quantity, and use of those resources and the location, type, and quantity of Withdrawals, Diversions and Consumptive Uses. To the extent feasible, the Water resources inventory shall be developed in cooperation with local, State, federal, tribal and other private agencies and entities, as well as the Council. Each Party's agencies shall cooperate with that Party in the development and maintenance of the inventory.

2. The Council shall assist each Party to develop a common base of data regarding the management of the Water Resources of the Basin and to establish systematic arrangements for the exchange of those data with other States and Provinces.

3. To develop and maintain a compatible base of Water use information, within five years of the effective date of this Compact any Person who Withdraws Water in an amount of 100,000 gallons per day or greater average in any 30-day period (including Consumptive Uses) from all sources, or Diverts Water of any amount, shall register the Withdrawal or Diversion by a date set by the Council unless the Person has previously registered in accordance with an existing State program. The Person shall register the Withdrawal or Diversion with the Originating Party using a form prescribed by the Originating Party that shall include, at a minimum and without limitation: the name and address of the registrant and date of registration; the locations and sources of the Withdrawal or Diversion; the capacity of the Withdrawal or Diversion per day and the amount Withdrawn or Diverted from each source; the uses made of the Water; places of use and places of discharge; and, such other information as the Originating Party may require. All registrations shall include an estimate of the volume of the Withdrawal or Diversion in terms of gallons per day average in any 30-day period.

4. All registrants shall annually report the monthly volumes of the Withdrawal, Consumptive Use and Diversion in gallons to the Originating Party and any other information requested by the Originating Party.

5. Each Party shall annually report the information gathered pursuant to this Section to a Great Lakes—St. Lawrence River Water use data base repository and aggregated information shall be made publicly available, consistent with the confidentiality requirements in Section 8.3.

6. Information gathered by the Parties pursuant to this Section shall be used to improve the sources and applications of scientific information regarding the Waters of the Basin and the impacts of the Withdrawals and Diversions from various locations and Water sources on the Basin Ecosystem, and to better understand the role of groundwater in the Basin. The Council and the Parties shall coordinate the collection and application of scientific information to further develop a mechanism by which individual and Cumulative Impacts of Withdrawals, Consumptive Uses and Diversions shall be assessed.

##### Section 4.2. Water Conservation and Efficiency Programs.

1. The Council commits to identify, in cooperation with the Provinces, Basin-wide Water conservation and



efficiency objectives to assist the Parties in developing their Water conservation and efficiency program. These objectives are based on the goals of:

- a. Ensuring improvement of the Waters and Water Dependent Natural Resources;
- b. Protecting and restoring the hydrologic and ecosystem integrity of the Basin;
- c. Retaining the quantity of surface water and groundwater in the Basin;
- d. Ensuring sustainable use of Waters of the Basin; and,
- e. Promoting the efficiency of use and reducing losses and waste of Water.

2. Within two years of the effective date of this Compact, each Party shall develop its own Water conservation and efficiency goals and objectives consistent with the Basin-wide goals and objectives, and shall develop and implement a Water conservation and efficiency program, either voluntary or mandatory, within its jurisdiction based on the Party's goals and objectives. Each Party shall annually assess its programs in meeting the Party's goals and objectives, report to the Council and the Regional Body and make this annual assessment available to the public.

3. Beginning five years after the effective date of this Compact, and every five years thereafter, the Council, in cooperation with the Provinces, shall review and modify as appropriate the Basin-wide objectives, and the Parties shall have regard for any such modifications in implementing their programs. This assessment will be based on examining new technologies, new patterns of Water use, new resource demands and threats, and Cumulative Impact assessment under Section 4.15.

4. Within two years of the effective date of this Compact, the Parties commit to promote Environmentally Sound and Economically Feasible Water Conservation Measures such as:

- a. Measures that promote efficient use of Water;
- b. Identification and sharing of best management practices and state of the art conservation and efficiency technologies;
- c. Application of sound planning principles;
- d. Demand-side and supply-side Measures or incentives; and,
- e. Development, transfer and application of science and research.

5. Each Party shall implement in accordance with paragraph 2 above a voluntary or mandatory Water conservation program for all, including existing, Basin Water users. Conservation programs need to adjust to new demands and the potential impacts of cumulative effects and climate.

#### Section 4.3. Party Powers and Duties.

1. Each Party, within its jurisdiction, shall manage and regulate New or Increased Withdrawals, Consumptive Uses and Diversions, including Exceptions, in accordance with this Compact.

2. Each Party shall require an Applicant to submit an Application in such manner and with such accompanying information as the Party shall prescribe.

3. No Party may approve a Proposal if the Party determines that the Proposal is inconsistent with this Compact or the Standard of Review and Decision or any implementing rules or regulations promulgated thereunder. The Party may approve, approve with modifications or disapprove any Proposal depending on the Proposal's consistency with this Compact and the Standard of Review and Decision.

4. Each Party shall monitor the implementation of any approved Proposal to ensure consistency with the approval and may take all necessary enforcement actions.

5. No Party shall approve a Proposal subject to Council or Regional Review, or both, pursuant to this Compact unless it shall have been first submitted to and reviewed by either the Council or Regional Body, or both, and approved by the Council, as applicable. Sufficient opportunity shall be provided for comment on the Proposal's consistency with this Compact and the Standard of Review and Decision. All such comments shall become part of the Party's formal record of decision, and the Party shall take into consideration any such comments received.

#### Section 4.4. Requirement for Originating Party Approval.

No Proposal subject to management and regulation under this Compact shall hereafter be undertaken by any Person unless it shall have been approved by the Originating Party.

#### Section 4.5. Regional Review.

##### 1. General.

a. It is the intention of the Parties to participate in Regional Review of Proposals with the Provinces, as described in this Compact and the Agreement.

b. Unless the Applicant or the Originating Party otherwise requests, it shall be the goal of the Regional Body to conclude its review no later than 90 days after notice under Section 4.5.2 of such Proposal is received from the Originating Party.

c. Proposals for Exceptions subject to Regional Review shall be submitted by the Originating Party to the Regional Body for Regional Review, and where applicable, to the Council for concurrent review.

d. The Parties agree that the protection of the integrity of the Great Lakes—St. Lawrence River Basin Ecosystem shall be the overarching principle for reviewing Proposals subject to Regional Review, recognizing uncertainties with respect to demands that may be placed on Basin Water, including groundwater, levels and flows of the Great Lakes and the St. Lawrence River, future changes in environmental conditions, the reliability of existing data and the extent to which Diversions may harm the integrity of the Basin Ecosystem.

e. The Originating Party shall have lead responsibility for coordinating information for resolution of issues related to evaluation of a Proposal, and shall consult with the Applicant throughout the Regional Review Process.

f. A majority of the members of the Regional Body may request Regional Review of a regionally significant or potentially precedent setting Proposal. Such Regional Review must be conducted, to the extent possible, within the time frames set forth in this Section. Any such Regional Review shall be undertaken only after consulting the Applicant.

2. Notice from Originating Party to the Regional Body.

a. The Originating Party shall determine if a Proposal is subject to Regional Review. If so, the Originating Party shall provide timely notice to the Regional Body and the public.

b. Such notice shall not be given unless and until all information, documents and the Originating Party's Technical Review needed to evaluate whether the Proposal meets the Standard of Review and Decision have been provided.

c. An Originating Party may:

i. Provide notice to the Regional Body of an Application, even if notification is not required; or,

ii. Request Regional Review of an application, even if Regional Review is not required. Any such Regional Review shall be undertaken only after consulting the Applicant.

d. An Originating Party may provide preliminary notice of a potential Proposal.

3. Public Participation.

a. To ensure adequate public participation, the Regional Body shall adopt procedures for the review of Proposals that are subject to Regional Review in accordance with this Article.

b. The Regional Body shall provide notice to the public of a Proposal undergoing Regional Review. Such notice shall indicate that the public has an opportunity to comment in writing to the Regional Body on whether the Proposal meets the Standard of Review and Decision.

c. The Regional Body shall hold a public meeting in the State or Province of the Originating Party in order to receive public comment on the issue of whether the Proposal under consideration meets the Standard of Review and Decision.

d. The Regional Body shall consider the comments received before issuing a Declaration of Finding.

e. The Regional Body shall forward the comments it receives to the Originating Party.

4. Technical Review.

a. The Originating Party shall provide the Regional Body with its Technical Review of the Proposal under consideration.

b. The Originating Party's Technical Review shall thoroughly analyze the Proposal and provide an evaluation of the Proposal sufficient for a determination of whether the Proposal meets the Standard of Review and Decision.

c. Any member of the Regional Body may conduct their own Technical Review of any Proposal subject to Regional Review.

d. At the request of the majority of its members, the Regional Body shall make such arrangements as it considers appropriate for an independent Technical Review of a Proposal.

e. All Parties shall exercise their best efforts to ensure that a Technical Review undertaken under Sections 4.5.4.c and 4.5.4.d does not unnecessarily delay the decision by the Originating Party on the Application. Unless the Applicant or the Originating Party otherwise requests, all Technical Reviews shall be completed no later than 60 days after the date the notice of the Proposal was given to the Regional Body.

5. Declaration of Finding.

a. The Regional Body shall meet to consider a Proposal. The Applicant shall be provided with an opportunity to present the Proposal to the Regional Body at such time.

b. The Regional Body, having considered the notice, the Originating Party's Technical Review, any other independent Technical Review that is made, any comments or objections including the analysis of comments made by the public, First Nations and federally recognized Tribes, and any other information that is provided under this Compact shall issue a Declaration of Finding that the Proposal under consideration:

i. Meets the Standard of Review and Decision;

ii. Does not meet the Standard of Review and Decision; or,

- iii.* Would meet the Standard of Review and Decision if certain conditions were met.
- c. An Originating Party may decline to participate in a Declaration of Finding made by the Regional Body.
- d. The Parties recognize and affirm that it is preferable for all members of the Regional Body to agree whether the Proposal meets the Standard of Review and Decision.
- e. If the members of the Regional Body who participate in the Declaration of Finding all agree, they shall issue a written Declaration of Finding with consensus.
- f. In the event that the members cannot agree, the Regional Body shall make every reasonable effort to achieve consensus within 25 days.
- g. Should consensus not be achieved, the Regional Body may issue a Declaration of Finding that presents different points of view and indicates each Party's conclusions.
- h. The Regional Body shall release the Declarations of Finding to the public.
- i. The Originating Party and the Council shall consider the Declaration of Finding before making a decision on the Proposal.

#### Section 4.6. Proposals Subject to Prior Notice.

1. Beginning no later than five years of the effective date of this Compact, the Originating Party shall provide all Parties and the Provinces with detailed and timely notice and an opportunity to comment within 90 days on any Proposal for a New or Increased Consumptive Use of 5 million gallons per day or greater average in any 90-day period. Comments shall address whether or not the Proposal is consistent with the Standard of Review and Decision. The Originating Party shall provide a response to any such comment received from another Party.

2. A Party may provide notice, an opportunity to comment and a response to comments even if this is not required under paragraph 1 of this Section. Any provision of such notice and opportunity to comment shall be undertaken only after consulting the Applicant.

#### Section 4.7. Council Actions.

1. Proposals for Exceptions subject to Council Review shall be submitted by the Originating Party to the Council for Council Review, and where applicable, to the Regional Body for concurrent review.

2. The Council shall review and take action on Proposals in accordance with this Compact and the Standard of Review and Decision. The Council shall not take action on a Proposal subject to Regional Review pursuant to this Compact unless the Proposal shall have been first submitted to and reviewed by the Regional Body. The Council shall consider any findings resulting from such review.

#### Section 4.8. Prohibition of New or Increased Diversions.

All New or Increased Diversions are prohibited, except as provided for in this Article.

#### Section 4.9. Exceptions to the Prohibition of Diversions.

1. Straddling Communities. A Proposal to transfer Water to an area within a Straddling Community but outside the Basin or outside the source Great Lake Watershed shall be excepted from the prohibition against Diversions and be managed and regulated by the Originating Party provided that, regardless of the volume of Water transferred, all the Water so transferred shall be used solely for Public Water Supply Purposes within the Straddling Community, and:

a. All Water Withdrawn from the Basin shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use. No surface water or groundwater from outside the Basin may be used to satisfy any portion of this criterion except if it:

*i.* Is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin;

*ii.* Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin;

*iii.* Maximizes the portion of water returned to the Source Watershed as Basin Water and minimizes the surface water or groundwater from outside the Basin;

b. If the Proposal results from a New or Increased Withdrawal of 100,000 gallons per day or greater average over any 90-day period, the Proposal shall also meet the Exception Standard; and,

c. If the Proposal results in a New or Increased Consumptive Use of 5 million gallons per day or greater average over any 90-day period, the Proposal shall also undergo Regional Review.

2. Intra-Basin Transfer. A Proposal for an Intra-Basin Transfer that would be considered a Diversion under this Compact, and not already excepted pursuant to paragraph 1 of this Section, shall be excepted from the prohibition against Diversions, provided that:

a. If the Proposal results from a New or Increased Withdrawal less than 100,000 gallons per day average over any 90-day period, the Proposal shall be subject to management and regulation at the discretion of the Originating Party.

b. If the Proposal results from a New or Increased Withdrawal 100,000 gallons per day or greater average

over any 90-day period and if the Consumptive Use resulting from the Withdrawal is less than 5 million gallons per day average over any 90-day period:

*i.* The Proposal shall meet the Exception Standard and be subject to management and regulation by the Originating Party, except that the Water may be returned to another Great Lake watershed rather than the Source Watershed;

*ii.* The Applicant shall demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake watershed to which the Water will be transferred, including conservation of existing water supplies; and,

*iii.* The Originating Party shall provide notice to the other Parties prior to making any decision with respect to the Proposal.

*c.* If the Proposal results in a New or Increased Consumptive Use of 5 million gallons per day or greater average over any 90-day period:

*i.* The Proposal shall be subject to management and regulation by the Originating Party and shall meet the Exception Standard, ensuring that Water Withdrawn shall be returned to the Source Watershed;

*ii.* The Applicant shall demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake watershed to which the Water will be transferred, including conservation of existing water supplies;

*iii.* The Proposal undergoes Regional Review; and,

*iv.* The Proposal is approved by the Council. Council approval shall be given unless one or more Council Members vote to disapprove.

3. Straddling Counties. A Proposal to transfer Water to a Community within a Straddling County that would be considered a Diversion under this Compact shall be excepted from the prohibition against Diversions, provided that it satisfies all of the following conditions:

*a.* The Water shall be used solely for the Public Water Supply Purposes of the Community within a Straddling County that is without adequate supplies of potable water;

*b.* The Proposal meets the Exception Standard, maximizing the portion of water returned to the Source Watershed as Basin Water and minimizing the surface water or groundwater from outside the Basin;

*c.* The Proposal shall be subject to management and regulation by the Originating Party, regardless of its size;

*d.* There is no reasonable water supply alternative within the basin in which the community is located, including conservation of existing water supplies;

*e.* Caution shall be used in determining whether or not the Proposal meets the conditions for this Exception. This Exception should not be authorized unless it can be shown that it will not endanger the integrity of the Basin Ecosystem;

*f.* The Proposal undergoes Regional Review; and,

*g.* The Proposal is approved by the Council. Council approval shall be given unless one or more Council Members vote to disapprove.

A Proposal must satisfy all of the conditions listed above. Further, substantive consideration will also be given to whether or not the Proposal can provide sufficient scientifically based evidence that the existing water supply is derived from groundwater that is hydrologically interconnected to Waters of the Basin.

4. Exception Standard. Proposals subject to management and regulation in this Section shall be declared to meet this Exception Standard and may be approved as appropriate only when the following criteria are met:

*a.* The need for all or part of the proposed Exception cannot be reasonably avoided through the efficient use and conservation of existing water supplies;

*b.* The Exception will be limited to quantities that are considered reasonable for the purposes for which it is proposed;

*c.* All Water Withdrawn shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use. No surface water or groundwater from the outside the Basin may be used to satisfy any portion of this criterion except if it:

*i.* Is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin;

*ii.* Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin;

*d.* The Exception will be implemented so as to ensure that it will result in no significant individual or cumulative adverse impacts to the quantity or quality of the Waters and Water Dependent Natural Resources of the Basin with consideration given to the potential Cumulative Impacts of any precedent-setting consequences associated with the Proposal;

*e.* The Exception will be implemented so as to incorporate Environmentally Sound and Economically

Feasible Water Conservation Measures to minimize Water Withdrawals or Consumptive Use;

f. The Exception will be implemented so as to ensure that it is in compliance with all applicable municipal, State and federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909; and,

g. All other applicable criteria in Section 4.9 have also been met.

Section 4.10. Management and Regulation of New or Increased Withdrawals and Consumptive Uses.

1. Within five years of the effective date of this Compact, each Party shall create a program for the management and regulation of New or Increased Withdrawals and Consumptive Uses by adopting and implementing Measures consistent with the Decision-Making Standard. Each Party, through a considered process, shall set and may modify threshold levels for the regulation of New or Increased Withdrawals in order to assure an effective and efficient Water management program that will ensure that uses overall are reasonable, that Withdrawals overall will not result in significant impacts to the Waters and Water Dependent Natural Resources of the Basin, determined on the basis of significant impacts to the physical, chemical, and biological integrity of Source Watersheds, and that all other objectives of the Compact are achieved. Each Party may determine the scope and thresholds of its program, including which New or Increased Withdrawals and Consumptive Uses will be subject to the program.

2. Any Party that fails to set threshold levels that comply with Section 4.10.1 any time before 10 years after the effective date of this Compact shall apply a threshold level for management and regulation of all New or Increased Withdrawals of 100,000 gallons per day or greater average in any 90 day period.

3. The Parties intend programs for New or Increased Withdrawals and Consumptive Uses to evolve as may be necessary to protect Basin Waters. Pursuant to Section 3.4, the Council, in cooperation with the Provinces, shall periodically assess the Water management programs of the Parties. Such assessments may produce recommendations for the strengthening of the programs, including without limitation, establishing lower thresholds for management and regulation in accordance with the Decision-Making Standard.

Section 4.11. Decision-Making Standard.

Proposals subject to management and regulation in Section 4.10 shall be declared to meet this Decision-Making Standard and may be approved as appropriate only when the following criteria are met:

1. All Water Withdrawn shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use;

2. The Withdrawal or Consumptive Use will be implemented so as to ensure that the Proposal will result in no significant individual or cumulative adverse impacts to the quantity or quality of the Waters and Water Dependent Natural Resources and the applicable Source Watershed;

3. The Withdrawal or Consumptive Use will be implemented so as to incorporate Environmentally Sound and Economically Feasible Water Conservation Measures;

4. The Withdrawal or Consumptive Use will be implemented so as to ensure that it is in compliance with all applicable municipal, State and federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909;

5. The proposed use is reasonable, based upon a consideration of the following factors:

a. Whether the proposed Withdrawal or Consumptive Use is planned in a fashion that provides for efficient use of the water, and will avoid or minimize the waste of Water;

b. If the Proposal is for an increased Withdrawal or Consumptive use, whether efficient use is made of existing water supplies;

c. The balance between economic development, social development and environmental protection of the proposed Withdrawal and use and other existing or planned withdrawals and water uses sharing the water source;

d. The supply potential of the water source, considering quantity, quality, and reliability and safe yield of hydrologically interconnected water sources;

e. The probable degree and duration of any adverse impacts caused or expected to be caused by the proposed Withdrawal and use under foreseeable conditions, to other lawful consumptive or non-consumptive uses of water or to the quantity or quality of the Waters and Water Dependent Natural Resources of the Basin, and the proposed plans and arrangements for avoidance or mitigation of such impacts; and,

f. If a Proposal includes restoration of hydrologic conditions and functions of the Source Watershed, the Party may consider that.

Section 4.12. Applicability.

1. Minimum Standard. This Standard of Review and Decision shall be used as a minimum standard. Parties may impose a more restrictive decision-making standard for Withdrawals under their authority. It is also acknowledged that although a Proposal meets the Standard of Review and Decision it may not be approved under the laws of the Originating Party that has implemented more restrictive Measures.



2. Baseline.

a. To establish a baseline for determining a New or Increased Diversion, Consumptive Use or Withdrawal, each Party shall develop either or both of the following lists for their jurisdiction:

i. A list of existing Withdrawal approvals as of the effective date of the Compact;

ii. A list of the capacity of existing systems as of the effective date of this Compact. The capacity of the existing systems should be presented in terms of Withdrawal capacity, treatment capacity, distribution capacity, or other capacity limiting factors. The capacity of the existing systems must represent the state of the systems. Existing capacity determinations shall be based upon approval limits or the most restrictive capacity information.

b. For all purposes of this Compact, volumes of Diversions, Consumptive Uses, or Withdrawals of Water set forth in the list(s) prepared by each Party in accordance with this Section, shall constitute the baseline volume.

c. The list(s) shall be furnished to the Regional Body and the Council within one year of the effective date of this Compact.

3. Timing of Additional Applications. Applications for New or Increased Withdrawals, Consumptive Uses or Exceptions shall be considered cumulatively within ten years of any application.

4. Change of Ownership. Unless a new owner proposes a project that shall result in a Proposal for a New or Increased Diversion or Consumptive Use subject to Regional Review or Council approval, the change of ownership in and of itself shall not require Regional Review or Council approval.

5. Groundwater. The Basin surface water divide shall be used for the purpose of managing and regulating New or Increased Diversions, Consumptive Uses or Withdrawals of surface water and groundwater.

6. Withdrawal Systems. The total volume of surface water and groundwater resources that supply a common distribution system shall determine the volume of a Withdrawal, Consumptive Use or Diversion.

7. Connecting Channels. The watershed of each Great Lake shall include its upstream and downstream connecting channels.

8. Transmission in Water Lines. Transmission of Water within a line that extends outside the Basin as it conveys Water from one point to another within the Basin shall not be considered a Diversion if none of the Water is used outside the Basin.

9. Hydrologic Units. The Lake Michigan and Lake Huron watersheds shall be considered to be a single hydrologic unit and watershed.

10. Bulk Water Transfer. A Proposal to Withdraw Water and to remove it from the Basin in any container greater than 5.7 gallons shall be treated under this Compact in the same manner as a Proposal for a Diversion. Each Party shall have the discretion, within its jurisdiction, to determine the treatment of Proposals to Withdraw Water and to remove it from the Basin in any container of 5.7 gallons or less.

Section 4.13. Exemptions.

Withdrawals from the Basin for the following purposes are exempt from the requirements of Article 4.

1. To supply vehicles, including vessels and aircraft, whether for the needs of the persons or animals being transported or for ballast or other needs related to the operation of the vehicles.

2. To use in a non-commercial project on a short-term basis for firefighting, humanitarian, or emergency response purposes.

Section 4.14. U.S. Supreme Court Decree: Wisconsin et al. v. Illinois et al.

1. Notwithstanding any terms of this Compact to the contrary, with the exception of Paragraph 5 of this Section, current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Water by the State of Illinois shall be governed by the terms of the United States Supreme Court decree in Wisconsin et al. v. Illinois et al. and shall not be subject to the terms of this Compact nor any rules or regulations promulgated pursuant to this Compact. This means that, with the exception of Paragraph 5 of this Section, for purposes of this Compact, current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Water within the State of Illinois shall be allowed unless prohibited by the terms of the United States Supreme Court decree in Wisconsin et al. v. Illinois et al.

2. The Parties acknowledge that the United States Supreme Court decree in Wisconsin et al. v. Illinois et al. shall continue in full force and effect, that this Compact shall not modify any terms thereof, and that this Compact shall grant the parties no additional rights, obligations, remedies or defenses thereto. The Parties specifically acknowledge that this Compact shall not prohibit or limit the State of Illinois in any manner from seeking additional Basin Water as allowed under the terms of the United States Supreme Court decree in Wisconsin et al. v. Illinois et al., any other party from objecting to any request by the State of Illinois for additional Basin Water under the terms of said decree, or any party from seeking any other type of modification to said decree. If an application is made by any party to the Supreme Court of the United States to modify said decree, the Parties to this Compact who are also parties to the decree shall seek formal input

from the Canadian Provinces of Ontario and Québec, with respect to the proposed modification, use best efforts to facilitate the appropriate participation of said Provinces in the proceedings to modify the decree, and shall not unreasonably impede or restrict such participation.

3. With the exception of Paragraph 5 of this Section, because current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Water by the State of Illinois are not subject to the terms of this Compact, the State of Illinois is prohibited from using any term of this Compact, including Section 4.9, to seek New or Increased Withdrawals, Consumptive Uses or Diversions of Basin Water.

4. With the exception of Paragraph 5 of this Section, because Sections 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12 (Paragraphs 1, 2, 3, 4, 6 and 10 only), and 4.13 of this Compact all relate to current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Waters, said provisions do not apply to the State of Illinois. All other provisions of this Compact not listed in the preceding sentence shall apply to the State of Illinois, including the Water Conservation Programs provision of Section 4.2.

5. In the event of a Proposal for a Diversion of Basin Water for use outside the territorial boundaries of the Parties to this Compact, decisions by the State of Illinois regarding such a Proposal would be subject to all terms of this Compact, except Paragraphs 1, 3 and 4 of this Section.

6. For purposes of the State of Illinois' participation in this Compact, the entirety of this Section 4.14 is necessary for the continued implementation of this Compact and, if severed, this Compact shall no longer be binding on or enforceable by or against the State of Illinois.

#### Section 4.15. Assessment of Cumulative Impacts.

1. The Parties in cooperation with the Provinces shall collectively conduct within the Basin, on a Lake watershed and St. Lawrence River Basin basis, a periodic assessment of the Cumulative Impacts of Withdrawals, Diversions and Consumptive Uses from the Waters of the Basin, every 5 years or each time the incremental Basin Water losses reach 50 million gallons per day average in any 90-day period in excess of the quantity at the time of the most recent assessment, whichever comes first, or at the request of one or more of the Parties. The assessment shall form the basis for a review of the Standard of Review and Decision, Council and Party regulations and their application. This assessment shall:

a. Utilize the most current and appropriate guidelines for such a review, which may include but not be limited to Council on Environmental Quality and Environment Canada guidelines;

b. Give substantive consideration to climate change or other significant threats to Basin Waters and take into account the current state of scientific knowledge, or uncertainty, and appropriate Measures to exercise caution in cases of uncertainty if serious damage may result;

c. Consider adaptive management principles and approaches, recognizing, considering and providing adjustments for the uncertainties in, and evolution of science concerning the Basin's water resources, watersheds and ecosystems, including potential changes to Basin-wide processes, such as lake level cycles and climate.

2. The Parties have the responsibility of conducting this Cumulative Impact assessment. Applicants are not required to participate in this assessment.

3. Unless required by other statutes, Applicants are not required to conduct a separate cumulative impact assessment in connection with an Application but shall submit information about the potential impacts of a Proposal to the quantity or quality of the Waters and Water Dependent Natural Resources of the applicable Source Watershed. An Applicant may, however, provide an analysis of how their Proposal meets the no significant adverse Cumulative Impact provision of the Standard of Review and Decision.

### ARTICLE 5

#### TRIBAL CONSULTATION

##### Section 5.1. Consultation with Tribes

1. In addition to all other opportunities to comment pursuant to Section 6.2, appropriate consultations shall occur with federally recognized Tribes in the Originating Party for all Proposals subject to Council or Regional Review pursuant to this Compact. Such consultations shall be organized in the manner suitable to the individual Proposal and the laws and policies of the Originating Party.

2. All federally recognized Tribes within the Basin shall receive reasonable notice indicating that they have an opportunity to comment in writing to the Council or the Regional Body, or both, and other relevant organizations on whether the Proposal meets the requirements of the Standard of Review and Decision when a Proposal is subject to Regional Review or Council approval. Any notice from the Council shall inform the Tribes of any meeting or hearing that is to be held under Section 6.2 and invite them to attend. The Parties and the Council shall consider the comments received under this Section before approving, approving with modifications or disapproving any Proposal subject to Council or Regional Review.

3. In addition to the specific consultation mechanisms described above, the Council shall seek to establish mutually agreed upon mechanisms or processes to facilitate dialogue with, and input from federally

recognized Tribes on matters to be dealt with by the Council; and, the Council shall seek to establish mechanisms and processes with federally recognized Tribes designed to facilitate on-going scientific and technical interaction and data exchange regarding matters falling within the scope of this Compact. This may include participation of tribal representatives on advisory committees established under this Compact or such other processes that are mutually-agreed upon with federally recognized Tribes individually or through duly-authorized intertribal agencies or bodies.

## ARTICLE 6 PUBLIC PARTICIPATION

### Section 6.1. Meetings, Public Hearings and Records.

1. The Parties recognize the importance and necessity of public participation in promoting management of the Water Resources of the Basin. Consequently, all meetings of the Council shall be open to the public, except with respect to issues of personnel.

2. The minutes of the Council shall be a public record open to inspection at its offices during regular business hours.

### Section 6.2. Public Participation.

It is the intent of the Council to conduct public participation processes concurrently and jointly with processes undertaken by the Parties and through Regional Review. To ensure adequate public participation, each Party or the Council shall ensure procedures for the review of Proposals subject to the Standard of Review and Decision consistent with the following requirements:

1. Provide public notification of receipt of all Applications and a reasonable opportunity for the public to submit comments before Applications are acted upon.

2. Assure public accessibility to all documents relevant to an Application, including public comment received.

3. Provide guidance on standards for determining whether to conduct a public meeting or hearing for an Application, time and place of such a meeting(s) or hearing(s), and procedures for conducting of the same.

4. Provide the record of decision for public inspection including comments, objections, responses and approvals, approvals with conditions and disapprovals.

## ARTICLE 7 DISPUTE RESOLUTION AND ENFORCEMENT

### Section 7.1. Good Faith Implementation.

Each of the Parties pledges to support implementation of all provisions of this Compact, and covenants that its officers and agencies shall not hinder, impair, or prevent any other Party carrying out any provision of this Compact.

### Section 7.2. Alternative Dispute Resolution.

1. Desiring that this Compact be carried out in full, the Parties agree that disputes between the Parties regarding interpretation, application and implementation of this Compact shall be settled by alternative dispute resolution.

2. The Council, in consultation with the Provinces, shall provide by rule procedures for the resolution of disputes pursuant to this section.

### Section 7.3. Enforcement.

1. Any Person aggrieved by any action taken by the Council pursuant to the authorities contained in this Compact shall be entitled to a hearing before the Council. Any Person aggrieved by a Party action shall be entitled to a hearing pursuant to the relevant Party's administrative procedures and laws. After exhaustion of such administrative remedies, (i) any aggrieved Person shall have the right to judicial review of a Council action in the United States District Courts for the District of Columbia or the District Court in which the Council maintains offices, provided such action is commenced within 90 days; and, (ii) any aggrieved Person shall have the right to judicial review of a Party's action in the relevant Party's court of competent jurisdiction, provided that an action or proceeding for such review is commenced within the time frames provided for by the Party's law. For the purposes of this paragraph, a State or Province is deemed to be an aggrieved Person with respect to any Party action pursuant to this Compact.

2. a. Any Party or the Council may initiate actions to compel compliance with the provisions of this Compact, and the rules and regulations promulgated hereunder by the Council. Jurisdiction over such actions is granted to the court of the relevant Party, as well as the United States District Courts for the District of Columbia and the District Court in which the Council maintains offices. The remedies available to any such court shall include, but not be limited to, equitable relief and civil penalties.

b. Each Party may issue orders within its respective jurisdiction and may initiate actions to compel compliance with the provisions of its respective statutes and regulations adopted to implement the authorities contemplated by this Compact in accordance with the provisions of the laws adopted in each Party's

jurisdiction.

3. Any aggrieved Person, Party or the Council may commence a civil action in the relevant Party's courts and administrative systems to compel any Person to comply with this Compact should any such Person, without approval having been given, undertake a New or Increased Withdrawal, Consumptive Use or Diversion that is prohibited or subject to approval pursuant to this Compact.

a. No action under this subsection may be commenced if:

i. The Originating Party or Council approval for the New or Increased Withdrawal, Consumptive Use or Diversion has been granted; or,

ii. The Originating Party or Council has found that the New or Increased Withdrawal, Consumptive Use or Diversion is not subject to approval pursuant to this Compact.

b. No action under this subsection may be commenced unless:

i. A Person commencing such action has first given 60 days prior notice to the Originating Party, the Council and Person alleged to be in noncompliance; and,

ii. Neither the Originating Party nor the Council has commenced and is diligently prosecuting appropriate enforcement actions to compel compliance with this Compact.

The available remedies shall include equitable relief, and the prevailing or substantially prevailing party may recover the costs of litigation, including reasonable attorney and expert witness fees, whenever the court determines that such an award is appropriate.

4. Each of the Parties may adopt provisions providing additional enforcement mechanisms and remedies including equitable relief and civil penalties applicable within its jurisdiction to assist in the implementation of this Compact.

## ARTICLE 8 ADDITIONAL PROVISIONS

### Section 8.1. Effect on Existing Rights.

1. Nothing in this Compact shall be construed to affect, limit, diminish or impair any rights validly established and existing as of the effective date of this Compact under State or federal law governing the Withdrawal of Waters of the Basin.

2. Nothing contained in this Compact shall be construed as affecting or intending to affect or in any way to interfere with the law of the respective Parties relating to common law Water rights.

3. Nothing in this Compact is intended to abrogate or derogate from treaty rights or rights held by any Tribe recognized by the federal government of the United States based upon its status as a Tribe recognized by the federal government of the United States.

4. An approval by a Party or the Council under this Compact does not give any property rights, nor any exclusive privileges, nor shall it be construed to grant or confer any right, title, easement, or interest in, to or over any land belonging to or held in trust by a Party; neither does it authorize any injury to private property or invasion of private rights, nor infringement of federal, State or local laws or regulations; nor does it obviate the necessity of obtaining federal assent when necessary.

### Section 8.2. Relationship to Agreements Concluded by the United States of America.

1. Nothing in this Compact is intended to provide nor shall be construed to provide, directly or indirectly, to any Person any right, claim or remedy under any treaty or international agreement nor is it intended to derogate any right, claim, or remedy that already exists under any treaty or international agreement.

2. Nothing in this Compact is intended to infringe nor shall be construed to infringe upon the treaty power of the United States of America, nor shall any term hereof be construed to alter or amend any treaty or term thereof that has been or may hereafter be executed by the United States of America.

3. Nothing in this Compact is intended to affect nor shall be construed to affect the application of the Boundary Waters Treaty of 1909 whose requirements continue to apply in addition to the requirements of this Compact.

### Section 8.3. Confidentiality.

1. Nothing in this Compact requires a Party to breach confidentiality obligations or requirements prohibiting disclosure, or to compromise security of commercially sensitive or proprietary information.

2. A Party may take measures, including but not limited to deletion and redaction, deemed necessary to protect any confidential, proprietary or commercially sensitive information when distributing information to other Parties. The Party shall summarize or paraphrase any such information in a manner sufficient for the Council to exercise its authorities contained in this Compact.

### Section 8.4. Additional Laws.

Nothing in this Compact shall be construed to repeal, modify or qualify the authority of any Party to enact any legislation or enforce any additional conditions and restrictions regarding the management and regulation of Waters within its jurisdiction.

#### Section 8.5. Amendments and Supplements.

The provisions of this Compact shall remain in full force and effect until amended by action of the governing bodies of the Parties and consented to and approved by any other necessary authority in the same manner as this Compact is required to be ratified to become effective.

#### Section 8.6. Severability.

Should a court of competent jurisdiction hold any part of this Compact to be void or unenforceable, it shall be considered severable from those portions of the Compact capable of continued implementation in the absence of the voided provisions. All other provisions capable of continued implementation shall continue in full force and effect.

#### Section 8.7. Duration of Compact and Termination.

Once effective, the Compact shall continue in force and remain binding upon each and every Party unless terminated.

This Compact may be terminated at any time by a majority vote of the Parties. In the event of such termination, all rights established under it shall continue unimpaired.

### ARTICLE 9 EFFECTUATION

#### Section 9.1. Repealer.

All acts and parts of acts inconsistent with this act are to the extent of such inconsistency hereby repealed.

#### Section 9.2. Effectuation by Chief Executive.

The Governor is authorized to take such action as may be necessary and proper in his or her discretion to effectuate the Compact and the initial organization and operation thereunder.

#### Section 9.3. Entire Agreement.

The Parties consider this Compact to be complete and an integral whole. Each provision of this Compact is considered material to the entire Compact, and failure to implement or adhere to any provision may be considered a material breach. Unless otherwise noted in this Compact, any change or amendment made to the Compact by any Party in its implementing legislation or by the U.S. Congress when giving its consent to this Compact is not considered effective unless concurred in by all Parties.

#### Section 9.4. Effective Date and Execution.

This Compact shall become binding and effective when ratified through concurring legislation by the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the Commonwealth of Pennsylvania and consented to by the Congress of the United States. This Compact shall be signed and sealed in nine identical original copies by the respective chief executives of the signatory Parties. One such copy shall be filed with the Secretary of State of each of the signatory Parties or in accordance with the laws of the state in which the filing is made, and one copy shall be filed and retained in the archives of the Council upon its organization. The signatures shall be affixed and attested under the following form:

In Witness Whereof, and in evidence of the adoption and enactment into law of this Compact by the legislatures of the signatory parties and consent by the Congress of the United States, the respective Governors do hereby, in accordance with the authority conferred by law, sign this Compact in nine duplicate original copies, attested by the respective Secretaries of State, and have caused the seals of the respective states to be hereunto affixed this \_\_\_\_ day of (month), (year).

**History:** Add. 2008, Act 190, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA