

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

PART 635

SURFACE AND UNDERGROUND COAL MINE RECLAMATION

SUBPART 1

GENERAL PROVISIONS

324.63501 Meanings of words and phrases defined in MCL 324.63502 and 324.63503.

Sec. 63501. For the purposes of this part, the words and phrases defined in sections 63502 and 63503 have the meanings ascribed to them in those sections.

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

Popular name: Act 451

Popular name: NREPA

324.63502 Definitions; A to O.

Sec. 63502. (1) "Agricultural land" includes any of the following as determined by the department of natural resources under this part or part 609 with the concurrence of the department of agriculture and rural development and the United States Department of Agriculture:

(a) Prime farmland, which is land that is determined to have the best combination of physical and chemical characteristics for producing food, feed, forage, and fiber crops and is also available for these uses, including cropland, pastureland, rangeland, forestland, or other land, but not urban built-up land or water. Prime farmland has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods. In general, prime farmland has an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. Prime farmland is permeable to water and air. Prime farmland is not excessively erodible or saturated with water for a long period of time, and it either does not flood frequently or is protected from flooding.

(b) Unique farmland, which is land other than prime farmland that is determined to have value for the production of specific high-value food and fiber crops. Unique farmland has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields or both high quality and high yields of a specific crop when treated and managed according to acceptable farming methods. Unique farmland includes those areas containing organic soils producing vegetables and specialty crops; high-lying and relatively frost-free fruit sites; and areas of high water table acid soils especially suited to highbush blueberry culture as well as the areas in the Upper Peninsula copper country that are producing strawberries.

(c) Other farmland, which is land other than prime farmland and unique farmland that is determined to have a combination of soils, location, and management characteristics that is producing or can produce in or for a region food, feed, forage, and fiber crops and is land on which agriculture represents the greatest current economic return from the land. Other farmland includes beef cow-calf operations that occur on generally fine-textured, somewhat poorly drained soils well-suited to forage production and grazing. Other farmland includes cropland areas that by their location are especially suited for the production of disease-free seed crops or that offer special opportunities for integrated best management programs.

(2) "Applicant" means a person applying for a permit from the department to conduct surface coal mining activities or underground coal mining activities pursuant to this part.

(3) "Approximate original contour" means that surface configuration achieved by the backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated.

(4) "Coal" means all forms of coal including lignite. Coal does not include clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substance of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal, and those minerals that occur naturally in liquid or gaseous form.

(5) "Coal exploration operation" means the substantial disturbance of the surface or subsurface for the purpose of or related to determining the location, quantity, or quality of a coal deposit.

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

(7) "Eligible land and water" means all land that was mined for coal or was affected by that mining, wastebanks, coal processing, or other coal mining processing, and abandoned or left in an inadequate reclamation status under the standards provided in subparts 3 and 4 prior to August 3, 1977, and for which there is not a continuing reclamation responsibility under state or federal law.

(8) "Historic resource" means a district, site, building, structure, or object of historical, architectural, archeological, or cultural significance that meets any of the following requirements:

(a) Is designated as a national historic landmark pursuant to the historic sites, buildings, and antiquities act, 54 USC 102303, 102304, 320101 to 320104, and 320106.

(b) Is listed on the national register of historic places pursuant to the national historic preservation act, 54 USC 300101, 300301 to 300305, 300307 to 300311, 300313 to 300320, 302101 to 302108, 302301 to 302304, 302501 to 302505, 302701 to 302706, 302901 to 302910, 303101 to 303103, 303901 to 303903, 304101 to 304112, 305501 to 305505, 306101 to 306114, 306121, 306122, 306131, and 307101 to 307108, or the state register of historic sites pursuant to the Governor John B. Swainson Michigan historical markers act, 1955 PA 10, MCL 399.151 to 399.160.

(c) Is recognized under a locally established historic district created pursuant to the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215.

(d) Is eligible for listing, designation, or recognition under subdivisions (a) to (c).

(9) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this part in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a reasonable person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger under the time necessary for abatement.

(10) "Local unit of government" means a county, city, township, or village; a board, commission, or authority of a county, city, township, or village; or a soil conservation district.

(11) "Operator" means a person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by coal mining within 12 consecutive calendar months in any 1 location.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 78, Eff. Aug. 6, 2001;—Am. 2017, Act 186, Eff. Feb. 19, 2018.

Popular name: Act 451

Popular name: NREPA

324.63503 Definitions; P to U.

Sec. 63503. (1) "Permit" means a permit issued by the department to conduct surface coal mining and reclamation operations.

(2) "Permit area" means the area of land indicated on the approved map submitted by the operator with the operator's application, which area of land is covered by the operator's bond required by section 63529 and is readily identifiable by appropriate markers on the site.

(3) "Permittee" means a person holding a permit to conduct surface coal mining and reclamation operations or underground mining activities pursuant to this part.

(4) "Reclamation plan" means a plan submitted by an applicant which provides a plan for reclamation of the proposed surface coal mining operations pursuant to section 63518.

(5) "Soil conservation district" means a soil conservation district established and operating pursuant to part 93.

(6) "Surface coal mining and reclamation operations" means surface mining operations and all activities necessary and incident to the reclamation of those operations conducted in this state after August 3, 1977.

(7) "Surface coal mining operations" means:

(a) Activities conducted in this state on the surface of any land in connection with a surface coal mine or subject to the requirements of section 63532 incident to an underground coal mine. These activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area and any other areas impacted by the surface coal mining operation mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal at or near the mine site.

(b) The areas on which activities described in subdivision (a) occur or where those activities disturb the natural land surface, including adjacent land the use of which is incidental to those activities; all land affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those

activities and for haulage; and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas on which are sited structures or facilities; or other property or materials on the surface, resulting from or incident to those activities.

(8) "Surface mining control and reclamation act of 1977" means Public Law 95-87, 91 Stat. 445.

(9) "Title IV of the surface mining control and reclamation act of 1977" means title IV of Public Law 95-87, 30 U.S.C. 1231 to 1243.

(10) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of this part due to indifference, lack of diligence, or lack of reasonable care or the failure to abate any violation of his or her permit or this part due to indifference, lack of diligence, or lack of reasonable care.

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

Popular name: Act 451

Popular name: NREPA

324.63504 Assumption by state of exclusive jurisdiction over regulation of surface coal mining and reclamation operations in state; purpose of part.

Sec. 63504. Pursuant to the authority granted in section 503 of title V of the surface mining control and reclamation act of 1977, Public Law 95-87, 30 U.S.C. 1253, that allows a state to assume and retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within that state by obtaining approval of a state program that has the capability of implementing and enforcing the provisions and purposes of the surface mining control and reclamation act of 1977, this state wishes to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations in this state. It is the purpose of this part to provide a state plan to implement and enforce the purposes provided in section 102 of title I of the surface mining control and reclamation act of 1977, Public Law 95-87, 30 U.S.C. 1202.

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

Popular name: Act 451

Popular name: NREPA

324.63505 Exclusive jurisdiction of department over surface coal mining and reclamation operations in state; construction of part.

Sec. 63505. The department has exclusive jurisdiction over all surface coal mining and reclamation operations in this state. This part shall not be construed as preempting a zoning ordinance enacted by a local unit of government or impairing a land use plan adopted pursuant to a law of this state by a local unit of government.

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

Popular name: Act 451

Popular name: NREPA

324.63506 Powers of department.

Sec. 63506. To implement this part, the department has the following powers:

(a) To promulgate and enforce rules pertaining to surface coal mining and reclamation operations consistent with the general intent and purposes of this part.

(b) To issue permits pursuant to this part.

(c) To conduct hearings pursuant to this part and the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(d) To issue orders requiring an operator to take actions that are necessary to comply with this part and with rules promulgated under this part.

(e) To issue orders modifying previous orders.

(f) To issue a final order revoking the permit of an operator who has failed to comply with an order of the department requiring the operator to take action required by this part or rules promulgated under this part.

(g) To order the immediate cessation of an ongoing surface mining operation or part of an ongoing surface mining operation if the department finds that the operation or part of the operation creates an imminent danger to the health and safety of the public, or is causing or can reasonably be expected to cause significant imminent harm to land, air, or water resources, and to take other action or make changes in a permit that are reasonably necessary to avoid or alleviate these conditions.

(h) To enter on and inspect a surface mining operation that is subject to this part to assure compliance with

this part.

(i) To conduct, encourage, request, and participate in studies, surveys, investigations, research, experiments, training, and demonstrations by contract, grant, or otherwise.

(j) To prepare and require permittees to prepare reports.

(k) To accept, receive, and administer grants pursuant to section 407(e) of title IV of the surface mining control and reclamation act of 1977 and accept, receive, and administer grants, gifts, loans, or other funds made available from any other source for the purposes of this part.

(l) To take those steps necessary to ensure that the state may participate to the fullest extent practicable in the abandoned land program provided in title IV of the surface mining control and reclamation act of 1977.

(m) To take those actions necessary to establish exclusive jurisdiction over surface coal mining and reclamation in this state under the provisions of this part and the surface mining control and reclamation act of 1977, including, in the event the federal administrative agency disapproves this state's program as submitted, making recommendations for remedial legislation to clarify, alter, or amend the program to meet the terms of the surface mining control and reclamation act of 1977.

(n) To enter into contracts with other state agencies that have pertinent expertise to obtain the professional and technical services necessary to implement this part.

(o) To establish a process, in order to avoid duplication, for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other federal or state permit process applicable to the proposed operations.

(p) To enter into cooperative agreements with the secretary of the United States department of the interior for the regulation of surface coal mining operations on federal land in accordance with the surface mining control and reclamation act of 1977.

(q) To perform any other duties and acts required by and provided for in this part.

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

Popular name: Act 451

Popular name: NREPA

324.63507 Rules.

Sec. 63507. (1) The department shall promulgate rules pertaining to surface coal mining and reclamation operations that are required by this part.

(2) A rule promulgated or a permit issued by the department may differ in its terms and provisions as to particular permit conditions, types of coal being extracted, particular areas of the state, or any other conditions that appear relevant and necessary if the action taken is consistent with attainment of the general intent and purposes of this part.

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

Popular name: Act 451

Popular name: NREPA

324.63508 Information submitted to department, other state agency, or local unit of government as public record; confidential information; rules.

Sec. 63508. Except when confidentiality is provided in this part, information submitted to the department, other state agency, or local unit of government pursuant to this part shall be a public record as provided in the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws. Information that pertains only to the analysis of the chemical and physical properties of coal, excepting information regarding such mineral or elemental content that is potentially toxic in the environment, or information that pertains to the exact location of archeological sites shall be kept confidential and is not a public record. The department shall promulgate rules establishing a procedure to determine whether information that pertains only to the analysis of the chemical and physical properties of the coal shall be kept confidential.

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

Popular name: Act 451

Popular name: NREPA

SUBPART 2

ABANDONED MINE RECLAMATION

324.63509 Participation in abandoned mines reclamation fund established by title IV of surface mining control and reclamation act of 1977; authorization; action; procedures.

Sec. 63509. The department is authorized to take all action necessary to ensure participation to the fullest extent practicable in the abandoned mines reclamation fund established by title IV of the surface mining control and reclamation act of 1977, and to function as the state's agency for that participation relative to coal mining. Pursuant to this part and title IV of the surface mining control and reclamation act of 1977, the department shall establish procedures for the designation of the land and water eligible for reclamation or abatement expenditures; for the submission of reclamation plans, annual projects, and applications to the appropriate authorities pursuant to the terms of this part and title IV of the surface mining control and reclamation act of 1977; and for the administration of all money received for abandoned mine reclamation or related purposes.

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

Popular name: Act 451

Popular name: NREPA

324.63510 State abandoned mine reclamation fund; creation; administration; investment of money; use of interest and earnings; money deposited in fund; carrying over remaining money; expenditures.

Sec. 63510. (1) The state abandoned mine reclamation fund is created in the state treasury and shall be administered by the department. The state treasurer shall direct the investment of money in the fund. The interest and earnings of the fund shall be used exclusively for the purposes specified in subsection (4).

(2) The following money shall be deposited in the fund:

(a) All funds from the application fees imposed under subpart 3, the inspection and reclamation fees imposed under subpart 9, and the civil fines imposed under subpart 8.

(b) All funds made available to the department for the purposes specified in subsection (4) pursuant to title IV of the surface mining control and reclamation act of 1977.

(c) All funds which may be donated to the department for the purposes specified in subsection (4) by any person.

(3) Any money remaining in the fund at the end of a fiscal year shall be carried over in the fund to the next and succeeding fiscal years and shall only be used for the purposes specified in subsection (4).

(4) Expenditure of money from the state abandoned mine reclamation fund shall be made as follows:

(a) Money that is deposited in the fund under subsection (2)(b) shall reflect the following priorities in the order stated:

(i) The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices.

(ii) The protection of public health, safety, and general welfare from adverse effects of coal mining practices.

(iii) The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices including measures for the conservation and development of soil; water, excluding channelization; woodland, fish, and wildlife; recreation resources; and agricultural productivity.

(iv) Research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques.

(v) The protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by coal mining practices.

(vi) The development of publicly owned land adversely affected by coal mining practices including land acquired as provided in this part for recreation and historic purposes, conservation, and reclamation purposes and open space benefits.

(b) Money that is deposited in the fund under subsection (2)(a) or (c) for any of the expenditures authorized in subdivision (a) and for any other purpose of this part including the cost of administering this part.

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

Popular name: Act 451

Popular name: NREPA

324.63511 Entry on private property by department; purposes; conditions; notice; money expended and benefits accruing to property chargeable against land; mitigating or offsetting claim in action by owner for damages; acquisition by department of land adversely affected by past coal mining practices; sale or transfer of acquired land suitable for development; rules; grant; public hearings.

Sec. 63511. (1) The department may, in the manner provided in this section, enter on private property for the purposes of conducting an investigation, inspection, study, or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of those adverse effects.

(2) The department may enter on property as provided in subsection (3) if all of the following conditions exist:

(a) The land or water resources on the property have been adversely affected by past coal mining practices.

(b) The adverse effects to land or water resources on the property are at a stage where, in the public interest, action should be taken to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(c) The department gives notice by certified mail, return receipt requested, to the record owner or owners of the property requesting permission to enter on the property.

(d) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known, or readily identifiable; or the owners of the property will not give permission, after receiving notice under subdivision (c), for the state or local unit of government to enter on the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(3) After giving notice by certified mail, return receipt requested, to the record owner or owners of the property; posting notice on the property; and advertising for 4 consecutive weeks in a newspaper of general circulation in the county in which the property is located, the department may enter on property adversely affected by the past coal mining practices and any other property necessary to have access to the property to take those actions necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. The money expended to restore, reclaim, abate, control, or prevent the adverse effects and the benefits accruing to the property entered on is chargeable against the land and shall mitigate or offset any claim in an action brought by the owner of any interest in the property for damages by virtue of the entry. This subsection is not intended to create new rights of action or eliminate existing immunities.

(4) The department may acquire land by purchase, donation, or condemnation that is adversely affected by past coal mining practices if the department determines that acquisition of the land is in the public interest, is necessary to successful reclamation, and either subdivision (a) or (b) applies:

(a) The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes, or provide open space benefits; and permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(b) Acquisition of coal refuse disposal sites and all coal refuse on the acquired land will serve the purposes of this section or is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

(5) The price paid for land acquired pursuant to this section shall reflect the market value of the land taking into consideration its current use and its condition as adversely affected by past coal mining practices.

(6) If land acquired pursuant to this section is considered suitable for agricultural, industrial, commercial, residential, or recreational development, the state may sell or transfer the land pursuant to rules promulgated by the department and procedures provided by law to ensure that the land is put to proper use consistent with the land use plans of local units of government. If a grant accepted pursuant to section 63506(k) is involved in the acquisition of the land to be sold, the land may be sold only when authorized by the secretary of the United States department of the interior. The department shall hold a public hearing in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws, in the county or counties of the state in which land acquired pursuant to this section is located. The hearings shall afford local citizens and local units of government an opportunity to participate in the decision concerning the use or disposition of the land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

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

Popular name: Act 451

Popular name: NREPA

324.63512 Itemizing money expended to complete project; filing statement of account and appraisal with county clerk; filing of lis pendens with statement of account and appraisal as lien on land; priority; amount; lien not to be filed against certain property; petition for

hearing concerning amount of lien; appeal.

Sec. 63512. (1) Within 6 months after the completion of a project to restore, reclaim, abate, control, or prevent the adverse effects of past mining practices on privately owned property, the department shall itemize the money expended to complete the project and shall file an account of the money expended with the clerk of the county in which the property is located, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices if the money so expended will result in a significant increase in property value. The filing of lis pendens with a copy of the statement of account and the appraisal constitutes a lien on the land second in priority only to a lien for delinquent property taxes placed on the property pursuant to section 40 of the general property tax act, Act No. 206 of the Public Acts of 1893, being section 211.40 of the Michigan Compiled Laws. The lien shall not exceed the amount of the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices. A lien shall not be filed against the property of a person who was a record owner of the surface rights in the property prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices.

(2) An affected landowner may petition the department within 60 days of the filing of the lien for a hearing concerning the amount of the lien. That hearing and any appeal shall be conducted under chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws.

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

Popular name: Act 451

Popular name: NREPA

324.63513 Expenditures from state abandoned mine reclamation fund for emergency restoration, reclamation, abatement, control, or prevention of adverse effects; conditions; entry on land where emergency exists as exercise of police power; warrant; action for damages; intent of subsection (2).

Sec. 63513. (1) The department may expend money from the state abandoned mine reclamation fund created by section 63510 for the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining practices on eligible land, if the department finds that all the following conditions exist:

(a) An emergency exists constituting a danger to the public health, safety, or general welfare.

(b) No other person, state agency, or local unit of government has commenced actions or operations on the eligible land to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(2) The department may enter on any land where the emergency exists and any other land necessary to have access to the land where the emergency exists to take those actions necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare, if the department has obtained a warrant authorizing that entry. Entry pursuant to this subsection is an exercise of the police power and not an act of condemnation or trespass. If the owner of any interest in the property brings an action for damages because of an entry made pursuant to this subsection, the money expended to restore, reclaim, abate, control, or prevent the adverse effects and the benefits accruing to the property entered on is chargeable against the land and shall mitigate or offset any claim in that action. This subsection does not create new rights of action or eliminate existing immunities.

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

Popular name: Act 451

Popular name: NREPA

**SUBPART 3
PERMITS**

324.63514 Conduct of surface coal mining operation without permit.

Sec. 63514. A person shall not conduct a surface coal mining operation in this state except as authorized by a permit issued by the department pursuant to part 13.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.63515 Term of permits; continuation of plan by successor in interest; termination of permit; extensions of time to commence operations; conditions.

Sec. 63515. (1) Permits issued pursuant to this part are for a term not to exceed 3 years, except that if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and to open the operation, and if the application is full and complete for the specified longer term, the department may grant a permit for that longer term. A successor in interest to a permittee who applies for a new permit within 30 days of succeeding to that interest and who is able to obtain the same bond coverage pursuant to subpart 5 as the original permittee may continue the surface coal mining and reclamation plan of the original permittee until the successor's application is granted or denied.

(2) A permit shall terminate if the permittee has not commenced the surface coal mining operation covered by the permit within 2 years after commencement of the period for which the permit is issued. However, upon application by the permittee, the department may grant reasonable extensions of time, not to exceed 6 months each, to commence a surface coal mining operation if the permittee demonstrates either of the following:

(a) The extension is necessary because the commencement of the operation has been enjoined by a court of competent jurisdiction.

(b) The extension is necessary because of conditions beyond the control and without the fault or negligence of the permittee.

For a coal lease issued under chapter 85, 41 Stat. 437, 30 U.S.C. 181 to 184, 185 to 188, 189 to 191, 192, 193, 195, 201, 202 to 203, 205 to 208-2, 209, 211 to 214, 223, 224 to 226, 226-2 to 226-3, 228 to 229a, 241, 251, and 261 to 263, commonly known as the mineral lands leasing act of 1920, the department shall not grant extensions of time that extend beyond the period allowed for diligent development under section 7 of chapter 85, 41 Stat. 439, commonly known as the mineral lands leasing act of 1920, 30 U.S.C. 207.

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

Popular name: Act 451

Popular name: NREPA

324.63516 Permit application; contents; submission of certificate of public liability insurance policy to department; policy provisions; maintenance of policy in full force and effect.

Sec. 63516. (1) The permit application shall be submitted to the department and shall contain all of the following:

(a) The names and addresses of the following persons:

(i) The applicant.

(ii) All legal owners of record of the property, surface or mineral, to be mined.

(iii) The holders of record of any leasehold interest in the property to be mined.

(iv) The purchasers of record under a land contract of the property to be mined.

(v) The operator if the operator is a person other than the applicant.

(vi) If the applicant is a partnership, corporation, association, or other business entity, the following where applicable: the names and addresses of every officer, partner, director, or person performing a function similar to a director, of the applicant; the name and address of any person owning of record 10% or more of any class of voting stock of the applicant; and a list of all names under which the applicant, partner, or principal shareholder previously operated a surface mining operation within the United States within the 5-year period preceding the date of submission of the application.

(b) The names and addresses of the owners of record of all surface and subsurface areas adjacent to the permit area.

(c) A statement of any current or previous surface coal mining permits held by the applicant including permit identification, and any pending application.

(d) Information concerning ownership and management of the applicant or operator required by the department by rule.

(e) A statement of whether the applicant or any subsidiary, affiliate, or other person controlled by or under common control with the applicant has ever held a federal, state, or local mining permit which in the 5-year period prior to the date of submission of the application has been suspended or revoked or whether that person has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved.

(f) A copy of an advertisement to be published in a newspaper of general circulation in the locality of the proposed site for 4 consecutive weeks, that indicates the ownership and a description of the location and boundaries of the proposed site sufficiently so that the proposed operation may be readily located, and a

statement that the application is available for public inspection at the office of the county clerk of each county in which the proposed permit area is located.

(g) A description of the type and method of coal mining operation that exists or is proposed, the engineering techniques proposed or used, and the equipment used or proposed to be used in the mining operation.

(h) The anticipated or actual starting and termination dates of each phase of the mining operation and the number of acres of land to be affected by each phase of the mining operation.

(i) An accurate map or plan, to scale determined by the department by rule, filed by the applicant with the department clearly showing the land to be affected as of the date of the application, the area of land within the permit area on which the applicant has the legal right to enter and commence surface mining operations, and those documents on which the applicant bases his or her legal right to enter and commence surface mining operations on the area affected, and whether that right is the subject of pending court litigation.

(j) Identification of the watershed and location of the surface streams, tributaries, groundwaters, and county and intercounty drains into which surface, pit drainage, or other waters from the mining operation will be discharged.

(k) A determination of the probable hydrologic consequences of the mining and reclamation operation, if any, both on and off the mine site, with respect to the hydrologic regime; quantity and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions; and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the department of the probable cumulative impacts of all anticipated mining in the area on the hydrology of the area and particularly on water availability. However, the determination of hydrologic consequences is not required until existing hydrologic information regarding the general area prior to mining is made available from the appropriate federal or state agency, except that the permit shall not be approved until the information is available and is incorporated into the permit application.

(l) The climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, average direction and velocity of prevailing winds, and seasonal temperature ranges.

(m) A statement of the result of test borings or core samplings from the proposed permit area, including logs of the drill holes; the thickness of the coal seam found, and an analysis of the chemical properties of the coal; the sulfur content of any coal seam; a chemical analysis of any potentially acid or toxic-forming sections of the overburden; and a chemical analysis of the stratum lying immediately underneath the coal to be mined. The provisions of this subdivision may be waived by the department with respect to any particular application by a written determination by the department that the information is unnecessary.

(n) A soil survey made or obtained according to standards established by the department of agriculture in order to confirm the exact location of agricultural land, if any, within the proposed permit area. The soil survey shall include the exact location of agricultural land enrolled under part 361.

(o) Accurate maps to scale determined by the department by rule clearly showing both of the following:

(i) The land to be affected as of the date of application.

(ii) All types of information set forth on topographical maps of the United States geological survey of a scale of 1:24,000 or 1:25,000 or larger, including all human-made features and significant known archeological sites existing on the date of application.

The map or plan shall, among other things specified by the department, show all boundaries of the land to be affected, the boundary lines and names of present owners of record of all surface areas adjacent to the permit area, and the location of all buildings within 1,000 feet of the permit area.

(p) Cross-section maps or plans of the land to be affected to a scale determined by the department by rule, including the actual area to be mined, prepared by or under the direction of and certified by a qualified registered professional engineer, or professional geologist with assistance from experts in related fields such as land surveying and landscape architecture, showing pertinent elevation and location of test borings or core samplings and depicting the following information: the nature and depth of the various strata of overburden; the location of subsurface water, if encountered, and its quality; the nature and thickness of any coal or rider seam above the coal seam to be mined; the nature of the stratum immediately beneath the coal seam to be mined; all mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected; existing or previous surface mining limits; the location and extent of any underground mines, including mine openings to the surface; the location of aquifers; the estimated elevation of the water table; the location of spoil, waste, or refuse areas and topsoil preservation areas; the location of all impoundments for waste or erosion control; any settling or water treatment facility; constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; profiles at appropriate cross-sections of the anticipated final surface configuration that will be achieved

pursuant to the operator's proposed reclamation plan; and other information required by the department by rule that is consistent with the purposes of this part.

(q) A reclamation plan that meets the requirements of this part and the requirements of the zoning ordinances enacted by a local unit of government.

(r) A determination of the impact on historic preservation concerns including all of the following:

(i) A statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities due to the potential effect of mining on historic resources or whether the area is under study for a designation of unsuitability in an administrative proceeding.

(ii) A description of the historic resources located within the proposed permit area and adjacent areas. The description shall be based on available information, including data in the possession of state and local archeological, historical, and cultural preservation agencies.

(iii) A map showing the boundaries of each historic resource within the permit area and adjacent areas.

(iv) An evaluation of the potential adverse effect that the proposed surface mining operation will have on historic resources within the proposed permit area and adjacent areas.

(v) A statement indicating whether there are feasible and prudent alternatives to the potential adverse effects on historic resources.

(vi) A statement of the measures proposed to prevent, minimize, or mitigate potential adverse effects upon historic resources located within the proposed permit area, including a proposal for recording or salvaging the resources if adverse effects cannot be avoided.

The determination required by this subdivision shall include the name, address, and employment position of each person that the applicant consulted in collecting information on historic resources.

(s) An agricultural impact statement that includes all the following:

(i) The location and boundaries of the proposed mining operation.

(ii) The number of acres to be affected by the proposed mining operation.

(iii) The nature and type of agricultural operations to be affected by the proposed mining operation.

(iv) The nature and extent of the effect of the proposed mining operation on the agricultural operations, including the number and types of buildings and other facilities that will be affected by the mining operation.

(v) The anticipated future effect of the proposed mining operation on adjacent agricultural land that will not be immediately affected by the proposed mining operation.

(vi) The anticipated amount of time, in years and months, during which the area affected by the proposed mining operation will be unsuitable for normal agricultural production.

(vii) The anticipated amount of time, in years and months, required to restore the area affected by the proposed mining operation to the level of productivity it had before it was affected by the mining operation.

(viii) The impact of the proposed mining operation on agriculture generally.

(t) Other data and maps as the department may require by rule that are consistent with the purposes of this part.

(2) An applicant for a surface mining and reclamation permit shall submit to the department as part of its application a certificate issued by an insurance company authorized to do business in this state certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which the permit is sought. The policy shall provide for personal injury and property damage protection consistent with the standards established in section 63528 in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including the use of explosives, and entitled to compensation under the applicable provisions of state law. The policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations.

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

Popular name: Act 451

Popular name: NREPA

324.63517 Renewal of permit.

Sec. 63517. (1) A permit issued pursuant to this part includes the right of successive renewal on expiration with respect to areas within the boundaries of the existing permit. The permittee may apply for renewal and except as provided in subsection (2) the renewal shall be issued.

(2) A permit shall not be renewed if, after a hearing conducted pursuant to section 63523, it is established and the department makes written findings that any of the following conditions exist:

(a) The terms and conditions of the existing permit are not being satisfactorily met by the permittee.

(b) The present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this part and the approved state plan or federal program pursuant to the surface coal

mining and reclamation act of 1977.

(c) The renewal requested substantially jeopardizes the operator's continuing responsibility for reclamation established under this part on existing permit areas.

(d) The operator has not provided evidence that the performance bond in effect for the operation or any additional bond the department might require pursuant to section 63529 will continue in full force and effect for the renewal requested in the application.

(e) Additional revised or updated information required by the department by rule has not been provided by the permittee.

(3) Before the renewal of a permit, the department shall provide notice to the appropriate persons, local units of government, and interested parties.

(4) If an application for renewal of an existing permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application that addresses new land areas is subject to the full standards applicable to a new application under this part.

(5) A permit renewal shall be for a term not to exceed the period of the existing permit established by this part. Application for permit renewal shall be made at least 120 days before the expiration of the existing permit.

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

Popular name: Act 451

Popular name: NREPA

324.63518 Reclamation plan; contents.

Sec. 63518. The reclamation plan required to be submitted pursuant to this part as part of a permit application shall include details necessary to demonstrate that reclamation required by this part can be accomplished, and shall include all of the following:

(a) Identification of land subject to the surface coal mining operation over the estimated life of that operation and the size, sequence, and timing of any subareas for which it is anticipated that individual permits for surface coal mining will be sought.

(b) The condition of the land to be covered by the permit prior to any surface coal mining, including:

(i) The uses existing at the time of the application and, if the land has a history of previous mining, the uses that preceded any mining.

(ii) The capability of the land, prior to any surface coal mining, to support a variety of uses, giving consideration to soil and foundation characteristics, topography, and vegetative cover and, if applicable, a soil survey prepared pursuant to section 63516(1)(n).

(iii) The productivity of the land prior to mining, based on the average yield of food, fiber, forage, or wood products consistent with productivity of similar lands in this state under best management practices.

(c) The use proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of those uses to applicable land use policies and plans. However, if the use made of the land before mining is agricultural and the use proposed to be made of the land following reclamation is other than that agricultural use, the permit shall not be approved by the department without the approval of the legislative body of each local unit of government in which land to be reclaimed is located.

(d) A detailed description of how the proposed postmining land use is to be achieved and the necessary support activities that may be needed to achieve that use.

(e) The engineering techniques proposed to be used in mining and reclamation and a description of the major equipment to be used. A plan for the control of surface water drainage and of water accumulation; a plan, if appropriate, for backfilling, soil stabilization and compacting, grading, and appropriate revegetation; and a plan for soil reconstruction, replacement, and stabilization, pursuant to the performance standards in section 63527(2)(g) for food, forage, and forest land identified in that section, and an estimate of the cost per acre of the reclamation, including a statement as to how the permittee plans to comply with each of the requirements set out in that section.

(f) The actions to be taken to maximize the utilization and conservation of the solid fuel resource being recovered so that mining and any activities related to mining of the land in the future can be minimized.

(g) An estimated timetable for the accomplishment of each major step in the reclamation plan.

(h) The actions to be taken to make the surface mining and reclamation operations consistent with surface owner plans and applicable land use plans and programs of local units of government.

(i) The actions to be taken to comply with applicable air and water quality laws of this state or the United States, rules and regulations of this state or the United States, or local ordinances and with applicable health and safety standards.

(j) The action to be taken to develop the reclamation plan in a manner consistent with local physical, environmental, and climatological conditions.

(k) The results of test borings that the applicant has made at the proposed permit area or other equivalent information and data in a form satisfactory to the department, including the location of subsurface water, and an analysis of those chemical properties of the coal and overburden that can be expected to have an adverse effect on the environment.

(l) An itemized list of land, interests in land, or options on those interests held by the applicant or pending bids by the applicant on interests in land adjacent to the proposed permit area.

(m) A detailed description of the actions to be taken during the mining and reclamation process to assure the protection of all of the following:

(i) The quality of surface and groundwater systems, both on-site and off-site, from adverse effects of the mining and reclamation process and the rights of present users to that water.

(ii) The quantity of surface and groundwater systems, both on-site and off-site, from adverse effects of the mining and reclamation process or to provide alternative sources of water where the protection of quantity cannot be assured.

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

Popular name: Act 451

Popular name: NREPA

324.63519 Blasting plan; submission by permit applicant.

Sec. 63519. Each applicant for a surface coal mining and reclamation permit shall submit to the department as a part of its application a blasting plan that outlines the procedures and standards by which the operator will meet the requirements of section 63527(2)(o).

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

Popular name: Act 451

Popular name: NREPA

324.63520 Filing copy of application with county and township clerks; exception; information obtained by department available to public with county clerk; confidentiality.

Sec. 63520. (1) An applicant for a surface coal mining and reclamation permit shall file a copy of the application with the county clerk of each county in which the mining is proposed to occur and with the township clerk of each township in which the mining is proposed to occur, except for that information in the application pertaining to the coal seam.

(2) Except when confidentiality is provided for in this part, a record, report, inspection materials, or other information obtained by the department shall be available to the public with the county clerk of each county in which the mining is proposed to occur. The department shall transmit a record, report, inspection material, or other information to each county clerk within 10 days after it is received by the department.

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

Popular name: Act 451

Popular name: NREPA

324.63521 Application fee.

Sec. 63521. An application for a surface coal mining and reclamation permit shall be accompanied by an initial application fee. The initial application fee is \$100.00.

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

Popular name: Act 451

Popular name: NREPA

324.63522 Determination of probable hydrologic consequences and statement of boring or sampling results; performance; cost.

Sec. 63522. If the department finds that the probable total annual production at all locations of a surface coal mining operator will not exceed 100,000 tons, the determination of probable hydrologic consequences and statement of the results of test borings or core samplings required by section 63516, on the written request of the operator, shall be performed by a qualified governmental agency or private consultant designated by the department, and the cost of the preparation of the determination and statement shall be assumed by the department.

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

Popular name: Act 451

Popular name: NREPA

324.63523 Application for permit or renewal; advertisement of ownership, location, and boundaries of land affected; notification of local units of government; written comments; notice to department of history, arts, and libraries; determination; filing objections to proposed application for permit; request for hearing; action by department.

Sec. 63523. (1) When an application for a surface coal mining and reclamation permit or renewal of an existing permit is submitted, the applicant's advertisement of ownership, location, and boundaries of the land to be affected shall be placed in a local newspaper of general circulation in the locality of the proposed surface coal mining operation for 4 consecutive weeks. The department shall notify local units of government in the vicinity of the proposed mining and reclamation area of the operator's intention to conduct a surface mining operation indicating the application's number and the county courthouse or township office in which a copy of the proposed surface coal mining and reclamation plan may be inspected. A local unit of government may submit written comments within a period established by the department on the mining applications with respect to the effect of the operation proposed by the applicant on the environment that is within its area of responsibility. The comments shall immediately be transmitted to the applicant by the department and shall be made available to the public at the same location as the mining application.

(2) In addition to the notice required in subsection (1), the department shall notify the department of history, arts, and libraries of the operator's intention to conduct a surface mining operation and shall provide the department of history, arts, and libraries with a copy of the permit application. Based on the information required pursuant to section 63516(1)(r), the department of history, arts, and libraries shall determine whether or not the proposed surface mining operation will adversely affect a historic resource. The department of history, arts, and libraries may file written objection to the proposed surface mining operation pursuant to subsection (3).

(3) A person having an interest that is or may be adversely affected by the operation proposed in the application and any federal or state government agency or local unit of government is entitled to file written objections to the proposed initial or revised application for a permit for surface coal mining and reclamation operation with the department not later than 30 days after the last publication of the notice required by subsection (1). Those objections shall immediately be transmitted to the applicant by the department and shall be made available to the public.

(4) Within 45 days after the last publication of the notice provided in subsection (1), the applicant or any person with an interest that is or may be adversely affected may request a hearing on the application. The hearing shall be held within 30 days after the expiration of the time allowed for submitting the request.

(5) An action taken by the department with respect to a permit application shall be conducted pursuant to chapters 4 and 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.292.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 78, Eff. Aug. 6, 2001.

Compiler's note: For transfer of powers and duties of department of history, arts, and libraries or the Michigan historical center relating to the identification, certification, and preservation of historical sites to the Michigan state housing development authority, see E.R.O. No. 2009-26, compiled at MCL 399.752.

For transfer of powers and duties of the state historic preservation office relating to the identification, certification, and preservation of historical sites from the Michigan state housing development authority to the Michigan strategic fund, see E.R.O. No. 2019-3, compiled at MCL 125.1998.

Popular name: Act 451

Popular name: NREPA

324.63524 Application for permit or revision of permit; notice; burden; requirements for approval; filing schedule listing notices of violations; issuance of permit; mining on agricultural land; consultation; finding.

Sec. 63524. (1) The applicant for a permit or revision of a permit has the burden of establishing that his or her application is in compliance with all the requirements of this part. Within 3 days after the granting of a permit, but before the permit is issued, the department shall notify the county clerk in each county in which the land to be affected is located that a permit has been issued and shall describe the location of the land.

(2) An application for a permit or revision of a permit shall not be approved unless the department finds, in writing, that all the following requirements have been met:

(a) The application is accurate and complete and complies with all of the requirements of this part.

(b) The applicant has demonstrated that reclamation as required by this part can be accomplished under the reclamation plan contained in the application.

(c) An assessment of the probable cumulative impact of all anticipated surface coal mining inside and outside the permit area on the hydrologic balance, including quantitative and qualitative analyses, has been made by the department, and the proposed operation has been designed to prevent material damage to the hydrologic balance inside and outside the permit area.

(d) The area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to this part and is not within an area under study for this designation in an administrative proceeding commenced pursuant to this part, unless in the area as to which an administrative proceeding has commenced, the applicant demonstrates that, prior to January 1, 1977, the applicant has made substantial legal and financial commitments in relation to the operation for which the applicant is applying for a permit.

(e) If the ownership of the coal has been severed from the private surface estate, the applicant has submitted to the department either the written consent of the surface owner to the extraction of coal by surface mining methods or a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods. However, if the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with state law, except that this part does not authorize the department to adjudicate property rights disputes.

(f) If the department of history, arts, and libraries determines that the proposed surface mining operation will adversely affect a historic resource, the application is approved jointly by the department, by the federal, state, or local agency with jurisdiction over the historic resource, and by the department of history, arts, and libraries.

(3) The applicant shall file, with the application, a schedule listing all notices of violations of this part or other law of this state and any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with a surface coal mining operation during the 3-year period prior to the date of application. The schedule shall include the final resolution of notice of the violation. If the schedule or other information available to the department indicates that a surface coal mining operation owned or controlled by the applicant is currently in violation of this part or other laws referred to in this subsection, the permit shall not be issued until the applicant submits affidavits that the violation has been corrected or is in the process of being corrected to the satisfaction of the department or the agency that has jurisdiction over the violation or that the notice of violation is being contested by the applicant. A permit shall not be issued to an applicant after a finding by the department, after opportunity for hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of violations of this part of such nature and duration with such resulting pollution, impairment, or destruction to the environment as to indicate an intent not to comply with this part.

(4) If the area proposed to be mined contains agricultural land, the department shall consult with the director of the department of agriculture and the secretary of the United States department of agriculture and shall not grant a permit to mine on agricultural land unless the department finds in writing that the operator has the technological capability to restore the mined area and any other areas impacted by the surface coal mining operation within a reasonable time to equivalent or higher levels of yield as nonmined agricultural land in the surrounding area under equivalent levels of management, and also finds that the applicant can meet the soil reconstruction standards of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 78, Eff. Aug. 6, 2001;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Compiler's note: For transfer of powers and duties of department of history, arts, and libraries or the Michigan historical center relating to the identification, certification, and preservation of historical sites to the Michigan state housing development authority, see E.R.O. No. 2009-26, compiled at MCL 399.752.

For transfer of powers and duties of the state historic preservation office relating to the identification, certification, and preservation of historical sites from the Michigan state housing development authority to the Michigan strategic fund, see E.R.O. No. 2019-3, compiled at MCL 125.1998.

Popular name: Act 451

Popular name: NREPA

324.63525 Application for revision of permit; standards; transfer, assignment, or sale of rights; review of outstanding permits; revision or modification of permit provisions; conducting action regarding permit pursuant to MCL 24.271 to 24.292.

Sec. 63525. (1) During the term of a permit, the permittee may submit to the department an application for a revision of the permit, including a revised reclamation plan. An application for a revision of a permit shall not be approved unless the department finds that reclamation as required by this part can be accomplished under the revised reclamation plan. An application for a revision is subject to part 13, except that the

department shall establish standards for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures shall apply.

(2) A transfer, assignment, or sale of the rights granted under a permit issued pursuant to this part shall not be made without the written approval of the department.

(3) The department shall, within a time limit prescribed by rule, review outstanding permits. The department may require revision or modification of the permit provisions during the terms of the permit based on a change in technology or a change in circumstances.

(4) All action taken by the department under this section regarding the granting, modification, denial, or revision of a permit shall be conducted pursuant to chapters 4 and 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.292.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Compiler's note: For transfer of powers and duties of department of history, arts, and libraries or the Michigan historical center relating to the identification, certification, and preservation of historical sites to the Michigan state housing development authority, see E.R.O. No. 2009-26, compiled at MCL 399.752.

For transfer of powers and duties of the state historic preservation office relating to the identification, certification, and preservation of historical sites from the Michigan state housing development authority to the Michigan strategic fund, see E.R.O. No. 2019-3, compiled at MCL 125.1998.

Popular name: Act 451

Popular name: NREPA

324.63526 Construction of subpart.

Sec. 63526. This subpart does not exempt a permittee from obtaining any other permit, license, or permission to engage in any activity regulated by this part that is required by any other law of this state, any rule promulgated under a law of this state, or a zoning ordinance enacted by a local unit of government.

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

Popular name: Act 451

Popular name: NREPA

SUBPART 4

ENVIRONMENTAL PERFORMANCE STANDARDS

324.63527 Performance standards.

Sec. 63527. (1) A permit issued under this part to conduct surface coal mining operations shall require that the operations meet the performance standards provided in subsection (2).

(2) Except as otherwise provided in this part, all surface coal mining and reclamation operations shall require the operator to do all of the following:

(a) Conduct surface coal mining operations in a manner that maximizes the utilization and conservation of the solid fuel resource being recovered to prevent re-affecting the land in the future through subsequent surface coal mining.

(b) Restore the land affected to a condition capable of supporting the uses that it was capable of supporting prior to any mining, or higher or better uses if priority is given to restoration of agricultural land to agricultural uses, if that use does not present an actual or probable hazard to public health or safety or pose an actual or probable threat of water diminution or pollution, and if the declared proposed land use in the permit application following reclamation is not inconsistent with applicable land use policies and plans, does not involve unreasonable delay in implementation, and is and is not in violation of a law of this state or the United States or a local ordinance.

(c) Backfill; compact, where advisable to ensure stability or to prevent leaching of toxic materials; and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated, unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this part. However, for surface coal mining that is carried out at the same location over a substantial period of time where the operation transects the coal deposit and the thickness of the coal deposits is large relative to the volume of the overburden and if the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region. In addition, in surface coal mining, where the volume of overburden is large relative to the thickness

of the coal deposit and if the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade, and compact the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region. In all cases, the overburden or spoil shall be shaped and graded to prevent slides, erosion, and water pollution and shall be revegetated in accordance with a plan for revegetation developed in cooperation with each soil conservation district affected by the surface coal mining operation and the requirements of this part.

(d) Stabilize and protect all surface areas, including spoil piles, affected by the surface coal mining and reclamation operation and effectively control erosion and attendant air and water pollution.

(e) Remove the topsoil from the land in a separate layer and replace it on the backfill area. Except that, if the topsoil is not utilized immediately, the operator shall be required to segregate it in a separate pile from other spoil and, when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick-growing plant or other means so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic materials, and is in a usable condition for sustaining vegetation when restored during reclamation. However, if topsoil is of insufficient quantity or of poor quality for sustaining vegetation requirements imposed in this subpart and subpart 3, or if other strata can be shown to be more suitable for vegetation requirements imposed in this subpart and subpart 3, then the operator shall remove, segregate, and preserve in a like manner the other strata that are best able to support vegetation.

(f) Restore the topsoil or the available subsoil that is best able to support vegetation.

(g) If agricultural land is to be mined and reclaimed, the specifications for soil removal, storage, replacement, and reconstruction shall be established by the department of agriculture in consultation with the secretary of the United States department of agriculture, and the operator is, at a minimum, required to do all of the following:

(i) Segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity. If the A horizon of the natural soil is not utilized immediately, it shall be stockpiled separately from other spoil and provided protection from wind and water erosion or contamination by other acid or toxic material.

(ii) Segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of those horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil. If the B and C horizons of the natural soil are not utilized immediately, they shall be stockpiled separately from other spoil and provided protection from wind and water erosion or contamination by other acid or toxic material.

(iii) Replace and regrade the root zone material described in subparagraph (ii) with proper compaction and uniform depth over the regraded spoil material.

(iv) Redistribute and grade in a uniform manner the surface soil horizon described in subparagraph (i).

(h) Create, if authorized in the approved mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities but only when all of the following are adequately demonstrated:

(i) The size of the impoundment is adequate for its intended purposes.

(ii) The impoundment dam construction will be designed to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under the watershed protection and flood prevention act, chapter 656, 68 Stat. 666.

(iii) The quality of impounded water will be suitable on a permanent basis for its intended use, and discharges from the impoundment will not degrade the water quality in the receiving stream below water quality standards established pursuant to applicable federal and state law.

(iv) The level of water will be stable.

(v) Final grading will provide safety and access for proposed water users.

(vi) The water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(vii) The impoundment is consistent with the laws of this state or the United States; rules and regulations of this state or the United States; or local ordinance.

(i) Conduct an augering operation associated with surface mining in a manner to maximize recoverability of coal reserves remaining after the operation and reclamation are complete, and seal all auger holes with an

impervious and noncombustible material in order to prevent drainage, except where the department determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health or safety. The department may prohibit augering under standards established by rule if necessary to maximize the utilization, recoverability, or conservation of solid fuel resources or to protect against adverse water quality impacts.

(j) Minimize disturbances to the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quality and quantity of water in surface and groundwater systems both during and after surface coal mining operations and during reclamation by:

(i) Avoiding acid or other toxic mine drainage by preventing or removing water from contact with toxic-producing deposits; treating drainage to reduce toxic content that adversely affects downstream water on being released to water courses; or casing, sealing, or otherwise managing bore holes, shafts, and wells and keeping acid or other toxic drainage from entering surface water and groundwater.

(ii) Conducting surface coal mining operations to prevent, to the extent possible using technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, except that contributions shall not be in excess of requirements set by applicable state or federal law.

(iii) Constructing any siltation structures pursuant to subparagraph (ii) prior to commencement of surface coal mining operations. A siltation structure shall be certified by a qualified registered engineer and shall be constructed as designed and approved in the reclamation plan.

(iv) Cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site in a manner approved by the department.

(v) Restoring recharge capacity of the mined area to approximate premining conditions.

(vi) Avoiding channel deepening or enlargement in operations requiring the discharge of water from mines.

(vii) Other actions as the department may prescribe.

(k) Stabilize all waste piles in designated areas with respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine working or excavation through construction in compacted layers including the use of incombustible and impervious materials, if necessary, and assure that the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to this part.

(l) Refrain from surface coal mining within 500 feet of an active or abandoned underground mine to prevent breakthroughs and to protect the health and safety of miners and other persons. However, the department shall allow an operator to mine near, through, or partially through an abandoned underground mine or closer than 500 feet of an active underground mine if the nature, timing, and sequencing of specific surface mine activities with specific underground mine activities are jointly approved by the federal and state agencies and local units of government concerned with surface mine regulation and the health and safety of underground miners, and the operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(m) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to rules promulgated by the department, all existing and new coal mine waste piles, consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as a dam or embankment.

(n) Ensure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated, buried, compacted, or otherwise disposed of to prevent contamination of surface water or groundwater and that contingency plans are developed to prevent sustained combustion of those materials.

(o) Ensure that explosives are used only in accordance with existing state and federal law and the rules promulgated by the department. Rules promulgated by the department shall require the permittee to do all of the following:

(i) Publish the schedule of the planned blasting in a newspaper of general circulation in the vicinity, mailing a copy of the proposed blasting schedule to every resident living within 1/2 mile of the proposed blasting site, and providing daily notice in the vicinity prior to any blasting.

(ii) Maintain for a period of at least 3 years and make available for public inspection on request during normal business hours a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts.

(iii) Limit the type of explosives and detonating equipment and the size, timing, and frequency of blasts based upon the physical conditions of the site to prevent injury to persons, damage to public and private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface water outside the permit area.

(iv) Have all blasting operations conducted pursuant to this part conducted by trained and competent

individuals certified by the department.

(v) Require the applicant or permittee to conduct a preblasting survey of a structure or dwelling upon the request of a resident or owner of a structure or dwelling within 1/2 mile of the permit area and to submit the survey to the department and a copy of the survey to the resident or owner making the request. The area covered by the survey shall be determined by the department and the survey shall include provisions and shall be conducted pursuant to standards established by rules promulgated by the department.

(p) Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations. However, if the applicant proposes to combine surface mining operations with underground mining operations to assure maximum practical recovery of the coal resources, the department may grant a variance for specific areas within the reclamation plan from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation if all the following conditions are met:

(i) The department finds in writing that:

(A) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations.

(B) The proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the coal resource and will avoid multiple disturbance of the surface.

(C) The plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and permits necessary for the underground mining operations have been issued by the appropriate authority.

(D) The areas proposed for the variance have been shown by the applicant to be necessary for implementing the proposed underground mining operations.

(E) Significant adverse environmental damage, either on site or off site, will not result from the delay in completion of reclamation as required by this part.

(F) Provisions for the off-site storage of spoil will comply with subdivision (v).

(ii) The department has promulgated specific rules to govern the granting of the variances in accordance with this subsection.

(iii) The variance granted will be reviewed annually by the department.

(iv) The liability under the bond filed by the applicant with the department pursuant to section 63529(2) is for the duration of the underground mining operations and until the requirements of sections 63527(2) and 63528 have been fully complied with.

(q) Ensure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion, siltation, pollution of water, and damage to fish or wildlife, the habitat of fish or wildlife, or public or private property.

(r) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to the channel as to significantly alter or degrade the normal flow of water.

(s) Establish on regraded areas and all other land affected, in cooperation with each soil conservation district affected by the surface coal mining operation, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in the extent of cover to the natural vegetation of the area. However, introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan.

(t) Assume the responsibility for successful revegetation as required by subdivision (s) for a period of 5 years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with subdivision (s). However, in those areas or regions of the state where the annual average precipitation is 26 inches or less, the operator's assumption of responsibility and liability will extend for a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work. If the department approves long-term intensive agricultural postmining land use, the applicable 5- or 10-year period of responsibility for revegetation commences at the date of initial planting for the long-term intensive agricultural postmining land use, except that if the department issues a written finding approving a long-term intensive agricultural postmining land use as part of the mining and reclamation plan, the department may grant exception to the provisions of subdivision (s).

(u) Protect off-site areas from slides or damage occurring during the surface coal mining and reclamation operations, and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area.

(v) Place all excess spoil material resulting from coal surface mining and reclamation activities in such a manner that:

(i) Spoil is transported and placed in a controlled manner in position for concurrent compaction and in such

a way as to assure mass stability and to prevent mass movement.

(ii) The areas of disposal are within the bonded permit areas and all organic matter is removed immediately prior to spoil placement.

(iii) Appropriate surface and internal drainage systems and diversion ditches are used to prevent spoil erosion and movement.

(iv) The disposal area does not contain springs, natural watercourses, or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains to prevent filtration of the water into the spoil pile.

(v) If placed on a slope, the spoil is placed on the most moderate slope and is placed, where possible, on or above a natural terrace, bench, or berm, if the placement provides additional stability and prevents mass movement.

(vi) If the toe of the spoil rests on a downslope, a rock toe buttress of sufficient size to prevent mass movement is constructed.

(vii) The final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses.

(viii) Design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards.

(ix) All other provisions of this part are met.

(w) Meet other criteria necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site.

(x) To the extent possible, using the best technology currently available, minimize disturbance and adverse impacts of the operation on fish, wildlife, and related environmental values and, if practicable, achieve enhancement of those resources.

(y) Provide for an undisturbed natural barrier to be retained in place as a barrier to slides and erosion beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for the distance the department determines necessary.

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

Popular name: Act 451

Popular name: NREPA

SUBPART 5

BONDING

324.63528 Certificate of public liability insurance; maintenance of policy in full force and effect; rules.

Sec. 63528. (1) An applicant for a permit shall submit to the department, as part of each permit application, a certificate that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation for which the permit is sought. The policy shall be maintained in full force and effect during the terms of the permit or any renewal, including all reclamation operations.

(2) The department shall promulgate rules establishing standards for adequate public liability insurance coverage consistent with section 63516(2).

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

Popular name: Act 451

Popular name: NREPA

324.63529 Performance bond; form, coverage, and amount; liability; execution by applicant and corporate surety; election to deposit cash or assets as security; acceptance of bond without separate surety; adjustment of bond or deposit amount and terms of acceptance; rules.

Sec. 63529. (1) After a surface coal mining and reclamation permit application has been approved, but before the permit is issued, the applicant shall file with the department, on a form prescribed and furnished by the department, a bond for performance payable to the state and conditioned on faithful performance of all requirements of this part and the permit. The bond shall cover that area of land within the permit area on which the applicant will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. Before succeeding increments of surface coal mining and reclamation operations are initiated and conducted within the permit area, the permittee shall provide an additional bond or bonds to cover those increments. The amount of the bond required for each bonded area shall be determined by the department and shall reflect the reclamation requirements of the approved permit and the probable difficulty

of the reclamation, giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the reclamation had to be performed by the department in the event of forfeiture, and the bond for the entire area under 1 permit shall not be less than \$10,000.00.

(2) Liability under the bond is for the duration of the surface coal mining and reclamation operation and for a period coincident with applicant's responsibility for revegetation. Except as provided in subsection (3), the bond shall be executed by the applicant and a corporate surety licensed to do business in this state.

(3) The applicant may elect to deposit cash or the following types of assets as security for the performance of the applicant's obligation under the bond:

(a) Obligations or securities of, or fully guaranteed as to principal and interest by, the United States or any of the agencies of the United States, or for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest.

(b) Obligations of a state of the United States, or an agency or authority of a state for which the full faith and credit of the state is pledged to provide payment of principal and interest.

(c) Obligations of this state or an agency or authority of this state for which specific revenues are pledged to provide payment of principal and interest.

(d) Negotiable certificates of deposit of a state or national bank.

(4) The cash deposit or market value of the assets shall be equal to or greater than the amount of the bond required for the bonded area.

(5) The department may accept the bond of the applicant without separate surety if the applicant demonstrates to the satisfaction of the department the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to bond the amount.

(6) The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the department from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

(7) The department shall promulgate rules establishing standards for adequate bond coverage consistent with this section.

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

Popular name: Act 451

Popular name: NREPA

324.63530 Total or partial release of performance bond or deposit; application; notice; publication; contents; inspection and evaluation of reclamation work; notification of decision; reclamation schedule; disapproval of application; notifying county clerk of filed application; written objections; public hearings; notice.

Sec. 63530. (1) The permittee may file a request with the department for the release of all or part of a performance bond or deposit. Within 30 days after submission of an application for bond or deposit release to the department, the permittee shall submit a copy of the notice to be published by the department for 4 consecutive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The notice is part of the bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, and the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's reclamation plan. In addition, as part of any bond release application, the applicant shall submit copies of letters that the applicant has sent to adjacent property owners and local units of government notifying them of the application to seek release from the bond.

(2) Within 30 days after the applicant complies with subsection (1), the department shall conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of the pollution, and the estimated cost of abating the pollution. The department shall notify the permittee, in writing, of its decision to release or not to release all or part of the performance bond or deposit based on the criteria in subsection (3) within 60 days from the filing of the request, if a public hearing is not held, and, if a public hearing is held, within 30 days after the hearing.

(3) The department may release the bond or deposit in whole or in part if the reclamation covered by the bond or deposit or portion of the reclamation has been accomplished as required by this part according to the

following schedule:

(a) If the permittee completes the backfilling, regrading, and drainage control of a bonded area in accordance with the reclamation plan, the release of 60% of the bond or collateral for the applicable permit area.

(b) If revegetation has been established on the regraded mined lands in accordance with the reclamation plan, the department may release an additional portion of the bond or deposit. In determining the amount of the bond or deposit to be released after successful revegetation has been established, the department shall retain the amount of the bond or deposit that is sufficient for a third party to establish revegetation and for the period specified for permittee responsibility in section 63527(2)(t). No part of the bond or deposit shall be released under this subdivision if the land to which the release would be applicable is contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of section 63527(2)(j) or until soil productivity for agricultural land has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section 63516(1)(n). If a silt dam is to be retained as a permanent impoundment pursuant to section 63527(2)(h), the portion of bond may be released under this subdivision if provisions for sound future maintenance have been made with the department.

(c) If the permittee has successfully completed all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for permittee responsibility in section 63527(2)(t). However, at least 25% of the bond or deposit shall be retained by the department until all reclamation requirements of this part are fully met.

(4) If the department disapproves the application for release of the bond or deposit or a portion of the bond or deposit, it shall notify the permittee, in writing, stating the reasons for disapproval, recommending corrective actions necessary to secure the release, and allowing opportunity for a public hearing.

(5) When an application for total or partial bond or deposit release is filed with the department, the department shall notify the county clerk of each county in which the surface coal mining operation is located by certified mail within 10 days after the application for the release of all or a portion of the bond or deposit is filed.

(6) A person with a legal interest or other interest that might be adversely affected by release of the bond or deposit or a federal or state agency or local unit of government is entitled to file written objections to the proposed release from bond or deposit with the department within 30 days after the last publication of the notice provided in subsection (1). If written objections are filed, the department shall conduct a public hearing on the objections and inform all the interested parties of the time and place of the hearing and hold the hearing in the locality of the surface coal mining operation within 30 days. Notice of the date, time, and location of the public hearings shall be published by the department in a newspaper of general circulation in the locality for 2 consecutive weeks.

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

Popular name: Act 451

Popular name: NREPA

324.63531 Coal exploration operations; rules; notice of intent to explore; violation of section or rules; penalties; maximum amount of coal removable pursuant to exploration permit.

Sec. 63531. (1) Coal exploration operations that significantly disturb the natural land surface shall be conducted in accordance with rules promulgated by the department. The rules shall include, at a minimum, the requirement that prior to conducting the exploration a person must file with the department notice of intent to explore. The notice of the intent to explore shall include a description of the exploration area; the period of proposed exploration; provisions for reclamation in accordance with the performance standards in section 63527 of all lands disturbed in exploration, including excavations, roads, and drill holes; and the removal of necessary facilities and equipment.

(2) A person who conducts any coal exploration operations that substantially disturb the natural land surface in violation of this section or the rules promulgated under this section is subject to the penalties provided in section 63537.

(3) An operator shall not remove more than 250 tons of coal pursuant to an exploration permit without the specific written approval of the department.

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

Popular name: Act 451

Popular name: NREPA

SUBPART 6

UNDERGROUND MINING

324.63532 Surface effects of underground mining; rules.

Sec. 63532. The department shall promulgate rules applicable to the surface effects of underground mining that are consistent with the requirements of the surface mining control and reclamation act of 1977, and regulations adopted pursuant to that act by the secretary of interior of the United States relative to coal mining.

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

Popular name: Act 451

Popular name: NREPA

324.63533 Permit requirements; suspension of underground coal mining; imminent danger; applicability of subparts 3, 4, 5, 7, and 8 to surface operations and surface impacts incident to underground coal mine; modifications; rules.

Sec. 63533. (1) A permit issued pursuant to this part relating to underground coal mining shall require the operator to do all of the following:

(a) Adopt measures consistent with technology currently available to prevent subsidence causing material damage to the extent technologically and economically feasible; maximize mine stability; and maintain the value and reasonably foreseeable use of such surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner. This subsection does not prohibit the standard method of room and pillar mining.

(b) Seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine working when no longer needed for the conduct of the mining operations.

(c) Fill or seal exploratory holes no longer necessary for mining, maximizing to the extent technologically and economically feasible return of mine and processing waste, tailings, and any other waste incident to the mining operation, to the mine workings or excavations.

(d) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations, stabilize all waste piles created by the permittee from current operations through construction in compacted layers, including the use of incombustible and impervious materials if necessary; assure that the leachate will not degrade surface or groundwaters below water quality standards established pursuant to applicable federal and state law; and assure that the final contour of the waste accumulation will be compatible with natural surroundings and that the site is stabilized and revegetated according to this section.

(e) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes and used either temporarily or permanently as dams or embankments.

(f) Establish, on regraded areas and all other lands affected, a diverse and permanent vegetative cover that is capable of self-regeneration and plant succession and that is at least equal in extent of cover to the natural vegetation of the area.

(g) Protect off-site areas from damages that may result from underground mining operations.

(h) Eliminate fire hazards and eliminate conditions that constitute a hazard to health and safety of the public.

(i) Minimize the disturbances of the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quantity of water in surface groundwater systems both during and after coal mining operations and during reclamation by meeting both of the following requirements:

(i) Avoiding acid or other toxic mine drainage by such measures as the following:

(A) Preventing or removing water from contact with toxic producing deposits.

(B) Treating drainage to reduce toxic content that adversely affects downstream water upon being released to watercourses.

(C) Casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering surface and groundwaters.

(ii) Conducting surface coal mining operations so as to prevent, to the extent possible using technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event shall such contributions be in excess of requirements set by applicable state or federal law; and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines.

(j) With respect to other surface impacts not specified in this subsection, including the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage,

repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under section 63527 for those effects that result from surface coal mining operations, except that the department shall make modifications in the requirements imposed by this subdivision as are necessary to accommodate the distinct difference between surface and underground coal mining.

(k) To the extent possible using technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable.

(l) Locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

(2) To protect the stability of the land, the department shall suspend underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if the department finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities.

(3) Subparts 3, 4, 5, 7, and 8 are applicable to surface operations and surface impacts incident to an underground coal mine with such modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining. The department shall promulgate rules to make those modifications.

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

Popular name: Act 451

Popular name: NREPA

SUBPART 7 INSPECTIONS AND MONITORING

324.63534 Conducting inspections and requiring monitoring and reporting of surface coal mining and reclamation operations; taking necessary actions to administer part and meet program requirements; right of entry and access to records; notice and report of violation; removal or disturbance of strata serving as aquifer; specifications; rules; inspection requirements.

Sec. 63534. (1) The department shall conduct inspections and require monitoring and reporting of surface coal mining and reclamation operations, and shall take all actions necessary to administer, enforce, and evaluate the administration of this part and to meet the state program requirements of the surface mining control and reclamation act of 1977, and for those purposes, the department or an authorized representative of the department, without advance notice and on presentation of appropriate credentials, has a right of entry to any surface coal mining and reclamation operation or any premises in which any records required to be maintained are located, and may at reasonable times, without delay, have access to and copy any records and inspect any monitoring equipment and method of operation required under this part or the rules promulgated under this part.

(2) Each inspector, on detection of each alleged violation of any requirement of this part, shall give written notice to the operator of the violation and shall report the violation, in writing, to the department. The notice of violation shall include a warning that the violation may result in a fine or penalty under subpart 8.

(3) If a surface coal mining and reclamation operation removes or disturbs strata that serve as an aquifer that significantly ensures the hydrologic balance of water use either on or off the mining site, the department shall specify:

(a) Monitoring sites to record the quantity and quality of surface drainage above and below the mine site as well as in the potential zone of influence.

(b) Monitoring sites to record level, amount, and samples of groundwater and aquifers that are affected or potentially affected by the mining and also directly below the lowermost, deepest coal seam to be mined.

(c) Records of well logs and boreholes data to be maintained.

(d) Monitoring sites to record precipitation.

(4) The department shall promulgate rules that provide for informing the operator of an alleged violation detected by an inspector and for making public all inspection and monitoring reports and other records and reports required to be kept pursuant to this part and the rules promulgated under this part.

(5) Inspections by the department shall comply with all of the following requirements:

(a) Occur on an irregular basis averaging not less than 1 partial inspection per month and 1 complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by each permit.

(b) Occur without prior notice to the permittee or agents or employees of the permittee except for necessary on-site meetings with the permittee.

(c) Include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this part.

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

Popular name: Act 451

Popular name: NREPA

324.63535 Sign.

Sec. 63535. Each permittee shall conspicuously maintain at the entrances or visible areas of access to the surface coal mining and reclamation operations a clearly visible sign that sets forth the name, business address, and phone number of the permittee and the permit number of the surface coal mining and reclamation operations.

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

Popular name: Act 451

Popular name: NREPA

324.63536 Information obtained under article available to public with county clerk.

Sec. 63536. Copies of any records, reports, inspection materials, or information obtained under this subpart by the department shall be made available to the public with the county clerk of each county in the area of mining within 10 days after they are received by the department so that they are conveniently available to residents in the areas of mining.

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

Popular name: Act 451

Popular name: NREPA

SUBPART 8 FINES AND PENALTIES

324.63537 Fines and imprisonment.

Sec. 63537. (1) The department may impose an administrative fine against a permittee or other person who violates a permit condition or a provision of this part. If the department issues a cease and desist order with respect to a violation, an administrative fine shall be assessed. An administrative fine shall not exceed \$5,000.00 for each violation, except that each day a violation continues may be considered a separate violation. In determining the amount of the administrative fine, the department shall consider the permittee's history of previous violations at the particular surface coal mining operation; the seriousness of the violation, including any pollution, impairment, or destruction to the environment and any hazard to the health or safety of the public; whether the permittee or person was indifferent or lacked diligence or reasonable care; and the demonstrated good faith of the permittee or person charged in attempting to achieve compliance after notification of the violation.

(2) An administrative fine shall be assessed only after the person charged with a violation described under subsection (1) has been given an opportunity for a public hearing. A hearing conducted under this section shall be conducted pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(3) The department shall inform the permittee and any other person charged within 30 days after the issuance of a notice or order charging that a violation of this part has occurred of the proposed amount of the administrative fine. The person charged with the violation then has 30 days to pay the proposed fine in full or, if the person wishes to contest either the amount of the fine or the fact of the violation, forward the proposed amount to the department for placement in an escrow account. If, through administrative or judicial review of the proposed fine, it is determined that a violation did not occur or that the amount of the fine should be reduced, the department, within 30 days, shall remit the appropriate amount to the person with interest at 12% per year. Failure to forward the money to the department within 30 days after the issuance of the notice or order will result in a waiver of all legal rights to contest the violation or the amount of the fine.

(4) An administrative fine imposed under this part may be recovered in a civil action brought by the attorney general at the request of the department.

(5) A person who willfully and knowingly violates a condition of a permit issued pursuant to this part or fails or refuses to comply with an order issued under this part, or an order incorporated in a final decision issued by the department under this part, except an order incorporated in a decision issued under subsection

(2) or section 63541, shall be punished by imprisonment for not more than 1 year, or a fine of not more than \$10,000.00, or both.

(6) A permittee or person who fails to correct a violation for which a notice or order has been issued under subsection (1) within the period permitted for its correction, which period shall not end until the entry of a final order by the department, in the case of any review proceedings initiated by the permittee in which the department orders the suspension of the abatement requirements of the notice or order after determining that the permittee will suffer irreparable loss or damage from the application of those requirements, or until the entry of an order of the court, in the case of any review proceedings initiated by the permittee in which the court orders the suspension of an abatement requirement of the citation, shall be assessed a civil fine of not less than \$750.00 for each day during which the failure or violation continues.

(7) If a corporate permittee or person violates a condition of a permit issued pursuant to a state program under section 63524 or fails or refuses to comply with any order issued under section 63539, or any order incorporated in a final decision issued by the department under this part, except an order incorporated in a decision issued under subsection (2), then a director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal is subject to the same fines and imprisonment that may be imposed on a person under subsections (1) and (5).

(8) A person who knowingly makes a false statement, representation, or certification, or who knowingly fails to make a statement, representation, or certification in an application, record, report, or other document filed or required to be maintained pursuant to a state program or this part or any order of decision issued by the department under this part, shall be punished by imprisonment for not more than 1 year, or a fine of not more than \$10,000.00, or both.

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

Popular name: Act 451

Popular name: NREPA

324.63538 Commencement of civil action; notice of intent to commence civil action; rule; notice of violation; effect of action by state; intervention by department or federal regulatory agency; costs of litigation; filing of security if temporary restraining order or preliminary injunction sought; construction of section.

Sec. 63538. (1) Except as provided in subsections (2) and (3), a person having an interest that is or may be adversely affected by an operation not in compliance with a permit or this part may commence a civil action in circuit court or federal district court, whichever has jurisdiction, on his or her own behalf to compel compliance against any of the following:

(a) The department or other state agency if there is alleged a failure of the department or other state agency to perform any act or duty under this part that is not discretionary with the department or other state regulatory authority.

(b) Any governmental instrumentality or agency of the United States that is alleged to be in violation of this part or of any rule, order, or permit issued pursuant to this part or any other person who is alleged to be in violation of any rule, order, or permit issued pursuant to this part.

(2) An action shall not be commenced under subsection (1)(a) until 20 days after the person intending to bring the action has given notice in writing of the intent to commence a civil action to the department or other state regulatory authority in the manner as the department shall by rule prescribe, except that the action may be brought immediately after the notification if the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(3) An action shall not be commenced under subsection (1)(b) until 20 days after the person intending to bring the action has given notice in writing of the violation to the department and to any alleged violator. However, if this state has commenced and is diligently prosecuting a civil action in a court of this state or the United States to require compliance with the provisions of this part, or any rule, order, or permit issued pursuant to this part, an action shall not be commenced pursuant to subsection (1)(b). In a civil action brought under this section, the department or federal regulatory agency, if not a party, may intervene as a matter of right.

(4) The circuit court, in an action brought pursuant to this section, may award costs of litigation, including attorney and expert witness fees to a party. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security.

(5) This section shall not be construed to restrict any right that a person or class of persons has under any statute or common law to seek enforcement of this part and the rules promulgated under this part, or to seek any other relief, including relief against the department.

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

Popular name: Act 451

Popular name: NREPA

324.63539 Notices and orders; application for review; investigation; public hearing; findings of fact; written decision; temporary relief from notice or order; conditions; requirements; suspension or revocation of permit; order to show cause; costs and expenses; civil action instituted by attorney general; certified mail.

Sec. 63539. (1) If the department determines, on the basis of an inspection, that a condition exists or practices exist or that a person or permittee is in violation of a requirement of this part or a permit condition required by this part and that this condition, practice, or violation also creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause pollution, impairment, or destruction to land, air, or water resources, the department shall immediately order a cessation of surface coal mining operations or the portion of surface coal mining operations relevant to the condition, practice, or violation. The cessation order shall remain in effect until the department determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the department pursuant to subsection (8). If the department finds that the ordered cessation of surface coal mining and reclamation operations, or any portion of those operations, will not completely abate the imminent danger to health or safety of the public or the pollution, impairment, or destruction to land, air, or water resources, the department shall, in addition to the cessation order, impose affirmative obligations on the operator requiring the operator to take those actions the department considers necessary to abate the imminent danger or the pollution, impairment, or destruction.

(2) If the department determines, on the basis of an inspection, that a permittee is in violation of a requirement of this part or a permit condition required by this part, but the violation does not create an imminent danger to the health or safety of the public or is not causing or reasonably expected to cause pollution, impairment, or destruction to land, air, or water resources, the department shall issue a notice to the permittee setting a reasonable time not to exceed 90 days for the abatement of the violation. If, on expiration of the period of time as originally set or subsequently extended for good cause shown, and on written finding of the department, the department finds that the violation has not been abated, it shall immediately order a cessation of surface coal mining operations or the portion of surface coal mining operations relevant to the violation. The cessation order shall remain in effect until the department determines that the violation has been abated or until modified, vacated, or terminated by the department under subsection (9). In the order of cessation issued by the department under this subsection, the department shall specify the steps necessary to abate the violation in the most expeditious manner possible, and shall include the necessary measures in the order.

(3) A permittee issued notice or order by the department pursuant to subsections (1) and (2), or any person having an interest that is or may be adversely affected by the notice or order or by any modification, vacation, or termination of the notice or order, may apply to the department for review of the notice or order within 30 days of issuance of the notice or order or within 30 days of its modification, vacation, or termination. On receipt of the application, the department shall conduct an investigation. The investigation shall provide an opportunity for a public hearing, at the request of the applicant or the person having an interest that is or may be adversely affected, to enable the applicant or the person to present information relating to the issuance and continuance of the notice or order or the modification, vacation, or termination of the notice or order. The filing of an application for review under this subsection shall not operate as a stay of any order or notice. A hearing conducted under this subsection shall be conducted pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws.

(4) On receiving the report of the investigation, the department shall make findings of fact and shall issue a written decision incorporating in the decision an order vacating, affirming, modifying, or terminating the notice or order or the modification, vacation, or termination of the notice or order complained of and incorporate its findings therein. If the application for review concerns an order for cessation of surface coal mining and reclamation operations issued pursuant to subsection (1) or (2), the department shall issue the written decision within 30 days of the receipt of the application for review unless temporary relief has been granted by the department under subsection (5).

(5) Pending completion of the investigation and hearing required by this section, the applicant may file with the department a written request that the department grant temporary relief from any notice or order issued under this section, together with a detailed statement giving reasons for granting the relief. The department shall issue an order or decision granting or denying the relief, except that if the applicant requests

relief from an order for cessation of coal mining and reclamation operations issued under subsection (3) or (4), the order or decision on the request shall be issued within 5 days of its receipt. The department may grant the relief, under conditions it may prescribe, if all of the following requirements are met:

(a) A hearing has been held in the locality of the permit area on the request for temporary relief in which interested parties were given an opportunity to be heard.

(b) The applicant shows that there is a substantial likelihood that the findings of the department will be favorable to the applicant.

(c) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(6) Following the issuance of an order to show cause as to why a permit should not be suspended or revoked under this section, the department shall hold a public hearing after giving written notice of the time, place, and date of the hearing. The hearing shall be conducted pursuant to chapters 4 and 5 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.292 of the Michigan Compiled Laws. If the department revokes the permit, the permittee shall immediately cease surface coal mining operations on the permit area and shall complete reclamation within a period specified by the department, or the department shall declare as forfeited the performance bonds for the operation.

(7) If an order is issued under this section, or as a result of any administrative proceeding under this part, at the request of any person, a sum equal to the aggregate amount of all costs and expenses, including attorney fees, as determined by the department to have been reasonably incurred by the person for or in connection with his or her participation in the proceedings, may be assessed against either party as the department considers proper, or as the court, for costs and attorneys' fees resulting from judicial review, considers proper.

(8) If the department has reason to believe, on the basis of an inspection, that a pattern of violations of any requirements of this part or any permit conditions required by this part exists or has existed, and if the department or its authorized representative also finds that these violations are caused by the unwarranted failure of the permittee to comply with requirements of this part or any permit conditions, or that the violations are willfully caused by the permittee, the department shall issue an order to the permittee to show cause as to why the permit should not be suspended or revoked. The order shall set a time and place for a public hearing, to be conducted pursuant to chapters 4 and 5 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, and the department shall inform all interested parties of the hearing. If the permittee fails to show cause why the permit should not be suspended or revoked, the department shall promptly suspend or revoke the permit.

(9) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or an agent of the permittee by the department. A notice or order issued pursuant to this section may be modified, vacated, or terminated by the department. A notice or order issued pursuant to this section that requires cessation of mining by the operator shall expire within 30 days of actual notice to the operator unless a public hearing is held at the site or within a reasonable proximity to the site so that any viewings of the site can be conducted during the course of the public hearing.

(10) The department may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or other appropriate order, if the permittee does any of the following:

(a) Violates or fails or refuses to comply with an order or decision issued by the department under this part.

(b) Interferes with, hinders, or delays the department or its authorized representative in carrying out the provisions of this section.

(c) Refuses to admit to the mine an authorized representative of the department, if the authorized representative presented the documents required by this part for proper entry.

(d) Refuses to permit inspection of the mine by an authorized representative of the department, if the authorized representative presented the documents required by this part for proper entry.

(e) Refuses to furnish information or a report requested by the department under the department's rules.

(f) Refuses to permit access to and copying of records the department determines reasonably necessary to carry out this part.

(11) All notices or orders required by this subpart shall be sent by certified mail, return receipt requested.

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

Popular name: Act 451

Popular name: NREPA

324.63540 Financial interest of department employee in coal mining operation prohibited; violation; penalty.

Sec. 63540. An employee of the department performing any function or duty under this part shall not have a direct or indirect financial interest in an underground or surface coal mining operation. A person who knowingly violates this subsection shall, on conviction, be punished by imprisonment for not more than 1 year, or a fine of not more than \$2,500.00, or both.

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

Popular name: Act 451

Popular name: NREPA

324.63541 Prohibited acts; violation; penalty.

Sec. 63541. Except as permitted by a law of this state or the United States, a person shall not willfully resist, prevent, impede, or interfere with the department or any of its agents in the performance of duties pursuant to this part. A person who violates this section shall be punished by imprisonment for not more than 1 year, or a fine of not more than \$5,000.00, or both.

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

Popular name: Act 451

Popular name: NREPA

SUBPART 9

INSPECTION AND RECLAMATION FEE

324.63542 Inspection and reclamation fee; amount; rule; quarterly reports; contents; notice of fee due; payment and disposition of fees.

Sec. 63542. (1) For the purposes of inspections and monitoring, and the administration and enforcement of this part, an operator is assessed an inspection and reclamation fee of not more than 25 cents per ton of coal mined, as determined by the department. The department shall establish, by rule, criteria for determining the amount of the inspection and reclamation fee. In making the determination of the amount of the inspection and reclamation fee, the department shall take into account funds made available to the department pursuant to the surface mining control and reclamation act of 1977, and funds from any other source for the purposes specified in this subsection. The total inspection and reclamation fees assessed annually shall not exceed the total amount appropriated to the department for the purposes specified in this subsection.

(2) An operator shall file quarterly reports with the department on a calendar year basis. The report shall include all of the following:

(a) The location of the mining operation and the areas mined during the quarter.

(b) A description of the progress of restoration and reclamation activities of the operator for the preceding quarter.

(c) The number of tons of coal mined during the quarter.

(3) Based on the information reported pursuant to subsection (2)(c), the department shall send the operator written notice of the amount of the fee due for the quarter. The operator shall pay the fee to the department within 30 days after receipt of the notice.

(4) The department shall deposit the inspection and reclamation fee in the state abandoned mine reclamation fund created by section 63510.

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

Popular name: Act 451

Popular name: NREPA

324.63543 Failure to submit quarterly report as grounds for revocation of permit; penalty; unpaid fee and penalty as debt; confidentiality of fee and reports; disclosure.

Sec. 63543. (1) Failure to submit a quarterly report constitutes grounds for revocation of a permit. An action taken by the department under this subsection shall be conducted pursuant to chapters 4 and 5 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.292 of the Michigan Compiled Laws.

(2) A penalty equal to 12% of the amount due, or \$1,000.00, whichever is greater, shall be assessed against the operator for a fee not properly or promptly paid pursuant to section 63542. An unpaid fee and penalty shall constitute a debt and become the basis of a civil action against the operator to compel the payment of the

debt.

(3) The inspection and reclamation fee and quarterly reports required by this subpart shall be confidential and shall not be subject to the disclosure requirements of the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws, except that disclosure may be made with the written consent of the operator filing the fee and report or pursuant to a court order.

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

Popular name: Act 451

Popular name: NREPA

324.63544 Prohibited acts; penalty.

Sec. 63544. Any person, corporate officer, agent, or director, on behalf of an operator, who knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification regarding a report required in this subpart, shall be punished by imprisonment for not more than 1 year, or a fine of not more than \$10,000.00, or both.

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

Popular name: Act 451

Popular name: NREPA

SUBPART 10 MISCELLANEOUS PROVISIONS

324.63545 Designating areas unsuitable for surface coal mining; rules; determination; petition by interested person; public hearing; written decision; statement; certain surface coal mining operation prohibited; consultation.

Sec. 63545. (1) The department shall promulgate rules establishing a process for designating areas unsuitable for surface coal mining. The rules shall include all of the following:

- (a) Surface coal mining land review.
- (b) Development of a data base and an inventory system that will permit proper evaluation of the capacity of different land areas of the state to support and permit reclamation of surface coal mining operations.
- (c) Development, by rule, of a method for implementing land use planning decisions concerning surface coal mining operations.
- (d) Development, by rule, of proper notice provisions and opportunity for public participation, including a public hearing, prior to making any designation or redesignation pursuant to this section.
- (e) Procedures for determining whether an area proposed for surface coal mining contains historic resources. These rules shall be developed with the concurrence of the department of history, arts, and libraries and the department of natural resources.

(2) On a petition submitted pursuant to subsection (3), the department shall designate an area as unsuitable for all or certain types of surface coal mining operations if the department determines that reclamation pursuant to the requirements of this part is not technologically and economically feasible. A surface area may be designated unsuitable for certain types of surface coal mining operations if those operations do any of the following:

- (a) Are incompatible with existing state or local land use plans or programs.
- (b) Affect fragile land or historic resources resulting in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems.
- (c) Affect renewable resource land, including aquifers and aquifer recharge areas, resulting in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products.
- (d) Affect natural hazard land, including areas subject to frequent flooding and areas of unstable geology, substantially endangering life and property.
- (e) Affect agricultural land by diminishing the productivity of the land after reclamation to less than the productivity before the site was mined.
- (f) Adversely affect an agricultural operation, including planting, harvesting, transportation, processing, or other activity included in the agricultural impact statement required by section 63516(1)(s).

(3) Determinations of the unsuitability of land for surface coal mining shall be integrated with present and future land use planning and regulation processes at the federal, state, and local levels. The requirements of this section do not apply to land on which surface coal mining operations were being conducted on August 3, 1977, or under a permit issued pursuant to former 1982 PA 303, or where substantial legal and financial commitments in the operation or proposed operation were in existence prior to January 4, 1977.

(4) A person having an interest that is or may be adversely affected has the right to petition the department

to have an area designated as unsuitable for surface coal mining operations or to have that designation terminated. The petition shall contain allegations of facts with supporting evidence. Within 30 days after receipt of the petition, the department shall hold a public hearing in the locality of the affected area. After a person having an interest that is or may be adversely affected has filed a petition and before the hearing, any person may intervene by filing allegations of facts with supporting evidence that would tend to establish the allegations. Within 60 days after the hearing, the department shall issue and furnish to the petitioner and any other party to the hearing a written decision with reasons for the decision. In the event that all the parties stipulate agreement prior to the requested hearing and withdraw their request, the hearing need not be held.

(5) Before designating land areas as unsuitable for surface coal mining operations, the department shall prepare a detailed statement on the potential coal resources of the area, the demand for coal resources, and the impact of the designation on the environment, the economy, and the supply of coal.

(6) After October 12, 1982, and subject to valid existing rights, surface coal mining operations, except those that existed on August 3, 1977, shall not be permitted that do any of the following:

(a) Adversely affect a publicly owned park or historic resource unless approved jointly by the department and the federal, state, or local agency with jurisdiction over the park or historic resource and by the department of history, arts, and libraries.

(b) Are within 100 feet of the outside right-of-way line of a public road, except where mine access roads or haulage roads join the right-of-way lines and except that the department may permit these roads to be relocated or the area affected to lie within 100 feet of the public road, if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected by the relocation will be protected.

(c) Are within 300 feet of an occupied dwelling, unless waived by the owner of the dwelling, or within 300 feet of any public building, school, church, community, or institutional building, or public park, or within 300 feet of a cemetery.

(7) The department shall designate areas protected by part 351 as unsuitable for surface coal mining.

(8) In administering this section, the department shall consult with the department of natural resources.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 78, Eff. Aug. 6, 2001.

Popular name: Act 451

Popular name: NREPA

324.63546 Government agency, unit, or instrumentality proposed to engage in surface coal mining operations; compliance with part.

Sec. 63546. An agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government, that proposes to engage in surface coal mining operations that are subject to the requirements of this part shall comply with all provisions of this part.

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

Popular name: Act 451

Popular name: NREPA

324.63547 Part inapplicable to certain activities.

Sec. 63547. This part does not apply to any of the following:

(a) The extraction of coal as an incidental part of federal, state, or local government financed highway or other construction under rules established by the department.

(b) The extraction of coal incidental to the extraction of other minerals if the amount of coal does not exceed 50 tons or 16-2/3% of the total tonnage of other minerals removed annually for purposes of commercial use or sale, whichever is less.

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

Popular name: Act 451

Popular name: NREPA

324.63548 Departures from environmental protection performance standards; authorization.

Sec. 63548. To encourage advances in mining and reclamation practices and to allow postmining land use for industrial, commercial, residential, or public use, including recreational facilities, the department may, with approval by the secretary of the United States department of the interior, authorize departures in individual cases and on an experimental basis from the environmental protection performance standards of this part. These departures may be authorized if the experimental practices are potentially at least as

environmentally protective, during and after mining operations, as those required by this part; if the mining operations approved for particular land use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and if the experimental practices do not reduce the protection afforded public health and safety below that provided by this part.

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

Popular name: Act 451

Popular name: NREPA

324.63549 Right to enforce or protect interest in natural resource affected by operation; replacement of water supply.

Sec. 63549. (1) This part shall not be construed as affecting the right of any person to enforce or protect, under applicable law, his or her interest in water or any other natural resource affected by a surface coal mining operation.

(2) The operator of a surface coal mining operation shall replace the water supply of an owner of an interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution, or interruption proximately resulting from the surface coal mine operation.

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

Popular name: Act 451

Popular name: NREPA