

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)**

**Act 451 of 1994**

Chapter 4

POLLUTION PREVENTION

Part 141

POLLUTION PREVENTION POLICY

Part 143

WASTE MINIMIZATION

**324.14301 Definitions.**

Sec. 14301.

As used in this part:

- (a) "Department" means the department of environmental quality.
- (b) "Environmental wastes" means all environmental pollutants, wastes, discharges, and emissions, regardless of how they are regulated and regardless of whether they are released to the general environment or the workplace environment.
- (c) "Pollution prevention" means all of the following:
  - (i) "Source reduction" as defined in the pollution prevention act of 1990, subtitle G of title VI of the omnibus budget reconciliation act of 1990, Public Law 101-508, 42 U.S.C. 13101 to 13109.
  - (ii) "Pollution prevention" as described in the United States environmental protection agency's pollution prevention statement dated June 15, 1993.
  - (iii) Environmentally sound on-site or off-site reuse or recycling.

**History:** 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 289, Imd. Eff. July 27, 1998

**Popular Name:** Act 451

**Popular Name:** NREPA

**324.14302 Pollution prevention; incorporation; purpose; personnel and support staff.**

Sec. 14302.

- (1) The department shall incorporate pollution prevention goals within its regulatory and permit programs, including data collection and analysis to advance the concept and implementation of pollution prevention.
- (2) The department shall employ personnel and provide support staff as are necessary to implement this part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 289, Imd. Eff. July 27, 1998

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

**Popular Name:** Act 451

**Popular Name:** NREPA

**324.14303 Pollution prevention; duties of department; emphasis on in-plant pollution prevention and reduction of hazardous waste.**

Sec. 14303.

- (1) The department shall do all of the following:
  - (a) Identify opportunities to encourage pollution prevention through the department's regulatory programs.
  - (b) Identify opportunities to encourage pollution prevention through the department's permit programs.
  - (c) Identify how pollution prevention efforts should be documented in environmental impact statements.
  - (d) Analyze and make recommendations on the value of imposing statewide goals or goals for particular

environmental wastes, or both, for pollution prevention, minimum recycling standards, and environmental waste treatment standards.

(e) Publish an annual analysis of pollution prevention efforts and potentials in the state.

(2) In performing its responsibilities under subsection (1), the department shall place a particular emphasis on in-plant pollution prevention.

(3) Consistent with the congressional declaration in section 1003(b) of subtitle A of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6902, that it is the national policy of the United States that, wherever feasible, hazardous waste is to be reduced or eliminated as expeditiously as possible, the department shall place a particular emphasis on the prevention of an environmental waste that is a hazardous waste as defined in section 11103.

**History:** 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 289, Imd. Eff. July 27, 1998

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

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14304 Transmitting certain information.**

Sec. 14304.

The department shall assure that relevant information received under section 313 of subtitle B of the emergency planning and community right-to-know act of 1986, title III of the superfund amendments and reauthorization act of 1986, Public Law 99-499, 42 U.S.C. 11023, is transmitted to the department.

**History:** 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 289, Imd. Eff. July 27, 1998

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

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14305 Repealed. 1998, Act 289, Imd. Eff. July 27, 1998.**

**Compiler's Notes:** The repealed section pertained to providing information to waste reduction assistance service and department of commerce liaison.

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14306 Annual report.**

Sec. 14306.

The department shall prepare and deliver, before January 1 of each year, a report detailing the efforts the department has undertaken during the previous fiscal year to implement this part. The annual report shall be delivered to the legislature, the governor, and the chairpersons of the appropriations committees in the senate and the house of representatives for their use in evaluating future appropriations for the department to implement this part. The annual report may include the information generated pursuant to sections 14303 and 14304 and may recommend changes in policies and regulatory approaches that will encourage pollution prevention.

**History:** 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 289, Imd. Eff. July 27, 1998

**Popular Name:** Act 451

**Popular Name:** NREPA

Part 145  
WASTE REDUCTION ASSISTANCE

**324.14501 Definitions.**

Sec. 14501.

As used in this part:

(a) "Agricultural biomass" means residue and waste generated on a farm or by farm co-operative members from the production and processing of agricultural products, animal wastes, food processing wastes, or other materials as approved by the director.

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

(c) "Director" means the director of the department of environmental quality.

(d) "Eligible farmer or agricultural processor" means a person who processes agricultural products or a person who is engaged as an owner-operator of a farm in the production of agricultural goods as defined by section 35(1)(h) of the former single business tax act, 1975 PA 228, or by section 207(1)(d) of the Michigan business tax act, 2007 PA 36, MCL 208.1207.

(e) "Environmental wastes" means all environmental pollutants, wastes, discharges, and emissions, regardless of how they are regulated and regardless of whether they are released to the general environment or the workplace environment.

(f) "Pollution prevention" means all of the following:

(i) "Source reduction" as defined in 42 USC 13102.

(ii) "Pollution prevention" as described in the United States environmental protection agency's pollution prevention statement dated June 15, 1993.

(iii) Environmentally sound on-site or off-site reuse or recycling including, but not limited to, the use of agricultural biomass by qualified agricultural energy production systems.

(g) "Qualified agricultural energy production system" means the structures, equipment, and apparatus to be used to produce a gaseous fuel from the noncombustive decomposition of agricultural biomass and the apparatus and equipment used to generate electricity or heat from the gaseous fuel or store the gaseous fuel for future generation of electricity or heat. Qualified agricultural energy production system may include, but is not limited to, a methane digester, biomass gasification technology, or thermal depolymerization technology.

(h) "RETAP" means the retired engineers technical assistance program created in section 14511.

(i) "Retap fund" means the retired engineers technical assistance program fund created in section 14512.

(j) "Small business" means a business that is not dominant in its field as described in 13 CFR part 121 and meets both of the following requirements:

(i) Is independently owned or operated, by a person that employs 500 or fewer individuals.

(ii) Is a small business concern as defined in 15 USC 632.

**History:** 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 289, Imd. Eff. July 27, 1998 ;-- Am. 2004, Act 333, Imd. Eff. Sept. 23, 2004 ;-- Am. 2006, Act 254, Imd. Eff. July 5, 2006 ;-- Am. 2007, Act 174, Imd. Eff. Dec. 21, 2007

**Popular Name:** Act 451

**Popular Name:** NREPA

**324.14502 Reduction in amount of generated environmental waste; emphasis on pollution prevention; personnel; staff and services.**

Sec. 14502.

(1) The department shall inform, assist, educate, and provide funding, as provided in this part, to persons to facilitate a reduction in the amount of environmental waste generated in the state. The department shall place a particular emphasis on in-plant pollution prevention.

(2) The department shall employ personnel and provide staff and services as are necessary to implement this part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 289, Imd. Eff. July 27, 1998

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

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14503 Pollution prevention information clearinghouse; establishment; duties; contracts.**

Sec. 14503.

(1) The department shall establish a pollution prevention information clearinghouse which shall do all of the following:

- (a) Upon request, provide specific pollution prevention information to any person.
- (b) Publish information describing pollution prevention technologies.
- (c) Distribute available publications pertaining to pollution prevention.
- (d) Sponsor pollution prevention workshops targeted at specific industries.
- (e) Participate in conferences and meetings of business organizations.
- (f) Provide information and application forms as necessary to fulfill the department's responsibilities under sections 14505 and 14506.

(2) The department may contract to have any of the activities provided in subsection (1) performed by persons other than department personnel.

**History:** 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 289, Imd. Eff. July 27, 1998

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

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14504 Pollution prevention technical assistance.**

Sec. 14504.

The department shall provide and support technical assistance regarding pollution prevention to business and industry throughout the state and shall do all of the following:

- (a) Provide instruction on self-conducted environmental waste audits pertaining to pollution prevention.
- (b) Provide consultant referrals pertaining to pollution prevention.
- (c) Provide on-site assistance to business and industry pertaining to pollution prevention.
- (d) Provide other information and assistance that is considered appropriate by the department.

**History:** 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 289, Imd. Eff. July 27, 1998

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

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14505 Repealed. 1998, Act 289, Imd. Eff. July 27, 1998.**

**Compiler's Notes:** The repealed section pertained to establishment of waste reduction grants program.

**Popular Name:** Act 451  
**Popular Name:** NREPA

**324.14506 Pollution prevention research grants program; establishment; distribution of information and applications for grants; form and contents of application; recipients of grants; considerations.**

Sec. 14506.

- (1) The department shall establish a pollution prevention research grants program.
- (2) Information and applications for grants under this section shall be distributed upon request through the department.
- (3) An application for a grant under this section shall be on a form provided by the department and shall contain information required by the director.
- (4) The director shall make grants to colleges and universities, nonprofit corporations, or industry associations or other persons for industry specific research projects pertaining to pollution prevention.
- (5) The director, in making grants pursuant to this section, shall consider all of the following:
  - (a) The severity of the environmental waste problem being addressed.
  - (b) The extent that the technological development will reduce the volume or quantity or toxicity of environmental waste generated.
  - (c) The potential for the application of pollution prevention technology to other persons.
  - (d) The ability of the applicant to contribute matching funds.
  - (e) The percentage reduction of volume or quantity or toxicity of environmental waste that will be achieved.
  - (f) The likelihood of the applicant's project qualifying for other research grants or subsequent research grants from other sources.
  - (g) Whether the project is consistent with state law and policy.
  - (h) Additional criteria as the director considers appropriate.

**History:** 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 289, Imd. Eff. July 27, 1998

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

**Popular Name:** Act 451  
**Popular Name:** NREPA

**324.14507-324.14509 Repealed. 1998, Act 289, Imd. Eff. July 27, 1998.**

**Compiler's Notes:** The repealed sections pertained to waste reduction advisory committee.

**Popular Name:** Act 451  
**Popular Name:** NREPA

**324.14510 Annual report.**

Sec. 14510.

- (1) The department shall prepare and deliver, before January 1 of each year, a report detailing the efforts the department, including RETAP, has undertaken during the previous fiscal year to implement this part. The annual report shall be delivered to the legislature, the governor, and the chairpersons of the appropriations committees in the senate and the house of representatives for their use in evaluating future appropriations for the service.
- (2) By July 1, 1999, the department shall submit a report to the governor and legislature on the pollution prevention impacts of toxic materials accounting and toxics use reporting programs of other states and the federal government. The report shall evaluate the costs and benefits of such programs and shall recommend whether the

state should implement such programs to foster pollution prevention.

**History:** 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 289, Imd. Eff. July 27, 1998

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14511 Retired engineers technical assistance program; establishment; conduct; contract; priorities.**

Sec. 14511.

(1) The department shall establish a retired engineers technical assistance program. The RETAP shall provide assistance pursuant to section 14504. RETAP assistance shall be conducted by the retired engineers, scientists, and other qualified professionals participating in RETAP.

(2) The department may contract with public or private corporations to conduct 1 or more RETAP activities. Prior to entering into a contract under this subsection, the department shall submit the proposed contract to the legislature.

(3) The director may establish priorities for RETAP assistance based on the demand for RETAP assistance, the funds available for the assistance, and the needs of the applicants, taking into consideration the most effective use of the assistance.

**History:** Add. 1998, Act 289, Imd. Eff. July 27, 1998

**Compiler's Notes:** For transfer of powers and duties of department of environmental quality under retired engineers technical assistance program from department of environmental quality to Michigan agency for energy, department of licensing and regulatory affairs, see E.R.O. No. 2015-3, compiled at MCL 460.21.

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14512 Retired engineers technical assistance program fund; creation; disposition of funds; limitation; lapse; annual report; expenditure.**

Sec. 14512.

(1) The retired engineers technical assistance program fund is created within the state treasury.

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

(3) The total amount of money in the RETAP fund shall not exceed \$10,000,000.00.

(4) To capitalize the RETAP fund, \$700,000.00 from fees collected under section 11108 is appropriated and transferred from the general fund to the RETAP fund. If the RETAP fund is capitalized from a different source, \$700,000.00 is appropriated and transferred from the RETAP fund back to the waste reduction fee fund.

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

(6) The state treasurer shall annually report to the legislature on the amount of money in the RETAP fund.

(7) The department shall expend money from the RETAP fund, upon appropriation, to administer and operate the RETAP.

**History:** Add. 1998, Act 289, Imd. Eff. July 27, 1998

**Compiler's Notes:** For transfer of powers and duties of department of environmental quality under retired engineers technical assistance program from department of environmental quality to Michigan agency for energy, department of licensing and regulatory affairs, see E.R.O. No. 2015-3, compiled at MCL 460.21.

**Popular Name:** Act 451

**Popular Name:** NREPA

**324.14513 Small business pollution prevention assistance revolving loan fund; creation; disposition; lapse; expenditure; loan eligibility requirements; loan limitations; fund defined.**

Sec. 14513.

- (1) The small business pollution prevention assistance revolving loan fund is created within the state treasury.
- (2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.
- (3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.
- (4) The department shall expend money from the fund, upon appropriation, to provide loans to small businesses to implement pollution prevention projects. For each loan issued under this section, the money shall be disbursed by the department to a lending institution that has entered into a loan participation agreement with the department.
- (5) To be eligible for a loan from the fund for a qualified agricultural energy production system, an applicant shall meet all of the following requirements:
  - (a) The applicant shall be an eligible farmer or agricultural processor, or a for-profit farmer cooperative corporation organized under and operated in accordance with sections 98 to 109 of 1931 PA 327, MCL 450.98 to 450.109.
  - (b) The applicant shall be verified under the appropriate system of the Michigan agriculture environmental assurance program administered by the department of agriculture.
  - (c) Within a 3-year period immediately preceding the date the application was submitted, the applicant shall not have been found guilty of a criminal violation under this act.
  - (d) Within a 1-year period immediately preceding the date the application was submitted, the applicant shall not have been found responsible for a civil violation under this act that resulted in a civil fine of \$10,000.00 or more.
- (6) The amount of a loan from the fund shall not exceed \$200,000.00. A small business shall not receive more than 1 loan in any 3-year period. Interest rates paid by the small business shall be set by the director, but shall not exceed 5%.
- (7) As used in this section, "fund" means the small business pollution prevention assistance revolving loan fund created in subsection (1).

**History:** Add. 1998, Act 289, Imd. Eff. July 27, 1998 ;-- Am. 2004, Act 334, Imd. Eff. Sept. 23, 2004 ;-- Am. 2006, Act 254, Imd. Eff. July 5, 2006

**Popular Name:** Act 451

**Popular Name:** NREPA

**324.14514 Rules.**

Sec. 14514.

The department may promulgate rules to implement and administer this part.

**History:** Add. 2004, Act 333, Imd. Eff. Sept. 23, 2004

**Popular Name:** Act 451

**Popular Name:** NREPA

Part 147  
CHEMICAL SUBSTANCES  
SUBPART 1  
PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES

**324.14701 Definitions.**

Sec. 14701.

As used in this subpart:

- (a) "Department" means the department of environment, Great Lakes, and energy.
- (b) "Fire chief" means that term as defined in section 1 of the fire prevention code, 1941 PA 207, MCL 29.1.
- (c) "Organized fire department" means that term as defined in section 1 of the fire prevention code, 1941 PA 207, MCL 29.1.
- (d) "PFAS" means a perfluoroalkyl or polyfluoroalkyl substance.

**History:** Add. 2020, Act 132, Imd. Eff. July 8, 2020

**Compiler's Notes:** For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws. Former MCL 324.14701, which pertained to definitions, was repealed by Act 446 of 2012, Imd. Eff. Dec. 27, 2012.

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14702 Repealed. 2012, Act 446, Imd. Eff. Dec. 27, 2012.**

**Compiler's Notes:** For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws. The repealed section pertained to duties of department for administration and implementation of subpart.

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14703 Incident report.**

Sec. 14703.

Immediately after the end of a fire or other incident at which an organized fire department uses firefighting foam containing intentionally added PFAS, the fire chief shall report the incident to the Michigan pollution emergency alert system.

**History:** Add. 2020, Act 132, Imd. Eff. July 8, 2020

**Compiler's Notes:** Former MCL 324.14703, which pertained to determination by rule that certain compounds constitute sufficient danger to public health, safety, and welfare, was repealed by Act 446 of 2012, Imd. Eff. Dec. 27, 2012.

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14704 Repealed. 2012, Act 446, Imd. Eff. Dec. 27, 2012.**

**Compiler's Notes:** The repealed section pertained to disposal of certain solid or liquid wastes.

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14705 Collection program for firefighting foam concentrate; guidelines; subject to appropriations.**



Sec. 14705.

The department shall establish a collection program for firefighting foam concentrate containing intentionally added PFAS and establish guidelines for the program. Under the program, the department shall accept the foam concentrate free of charge and properly dispose of the foam concentrate. The program is contingent on legislative appropriations to cover program costs.

**History:** Add. 2020, Act 132, Imd. Eff. July 8, 2020

**Compiler's Notes:** Former MCL 324.14705, which pertained to violation of subpart as misdemeanor, was repealed by Act 446 of 2012, Imd. Eff. Dec. 27, 2012.

**Popular Name:** Act 451

**Popular Name:** NREPA

## SUBPART 2 PBDE COMPOUNDS

### **324.14721 Definitions; heading of subpart.**

Sec. 14721.

- (1) As used in this subpart:
  - (a) "Department" means the department of environmental quality.
  - (b) "Octa-BDE" means octabromodiphenyl ether.
  - (c) "PBDE" means polybrominated diphenyl ether.
  - (d) "Penta-BDE" means pentabromodiphenyl ether.
- (2) This subpart may be cited as the "Mary Beth Doyle PBDE act".

**History:** Add. 2004, Act 526, Imd. Eff. Jan. 3, 2005

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14722 Product or material containing penta-BDE; limitation; exceptions.**

Sec. 14722.

- (1) Beginning June 1, 2006, a person shall not manufacture, process, or distribute a product or material that contains more than 1/10 of 1% of penta-BDE.
- (2) This section does not apply to either of the following:
  - (a) Original equipment manufacturer replacement parts.
  - (b) The processing of recyclables containing penta-BDE in compliance with applicable federal, state, and local laws.

**History:** Add. 2004, Act 562, Imd. Eff. Jan. 3, 2005

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14723 Product or material containing octa-BDE; limitation; manufacturing, processing, or distributing; exception.**

Sec. 14723.

(1) Beginning June 1, 2006, a person shall not manufacture, process, or distribute a product or material that contains more than 1/10 of 1% of octa-BDE.

(2) This section does not apply to original equipment manufacturer replacement service parts or the processing of recyclables containing octa-BDE in compliance with applicable federal, state, and local laws.

**History:** Add. 2004, Act 526, Imd. Eff. Jan. 3, 2005

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14724 PBDE advisory committee; recommendations.**

Sec. 14724.

The department may establish a PBDE advisory committee to assist the department in determining the risk posed by the release of PBDEs, other than penta-BDE or octa-BDE, to human health and the environment. The department may use existing programs to monitor the presence of PBDEs in the state's environment to determine exposure and risk. If new scientific information gathered by the advisory committee indicates a significant risk to human health and the environment in the state, the advisory committee shall inform the department of risk or risks and, if the department concurs, the department shall advise the legislature of the risk. Nothing in this section shall preclude the department from issuing recommendations to the legislature independent of any actions of the advisory committee.

**History:** Add. 2004, Act 526, Imd. Eff. Jan. 3, 2005

**Compiler's Notes:** For transfer of PBDE advisory committee to department of environmental quality by type III transfer, see E.R.O. No. 2009-11, compiled at MCL 324.99915.

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14725 Violation as misdemeanor; penalty.**

Sec. 14725.

A person who violates this subpart is guilty of a misdemeanor punishable by a fine of not less than \$2,500.00 or more than \$25,000.00. Each day that a violation of this subpart continues shall be considered a separate violation.

**History:** Add. 2004, Act 562, Imd. Eff. Jan. 3, 2005

**Popular Name:** Act 451

**Popular Name:** NREPA

## **Part 148**

### **ENVIRONMENTAL AUDIT PRIVILEGE AND IMMUNITY**

### **324.14801 Definitions.**

Sec. 14801.

As used in this part:

(a) "Environmental audit" means a voluntary and internal evaluation conducted on or after the effective date of this part of 1 or more facilities or an activity at 1 or more facilities regulated under state, federal, regional, or local laws or ordinances, or of environmental management systems or processes related to the facilities or activity, or of a previously corrected specific instance of noncompliance, that is designed to identify historical or current noncompliance and prevent noncompliance or improve compliance with 1 or more of those laws, or to identify an

environmental hazard, contamination, or other adverse environmental condition, or to improve an environmental management system or process. Once initiated, an audit shall be completed within a reasonable time, not to exceed 6 months, unless a written request for an extension is approved by the director on reasonable grounds.

(b) "Environmental audit report" means a document or a set of documents, each labeled at the time it is created "environmental audit report: privileged document" and created as a result of an environmental audit. An environmental audit report shall include supporting information. Supporting information may include field notes, records of observations, findings, opinions, suggestions, conclusions, drafts, memoranda, follow-up reports, drawings, photographs, computer generated or electronically recorded information, maps, charts, graphs, and surveys, if the supporting information or documents are created or prepared for the primary purpose and in the course of or as a result of an environmental audit. An environmental audit report may also include an implementation plan that addresses correcting past noncompliance, improving current compliance, improving an environmental management system, and preventing future noncompliance, as appropriate.

(c) "Privilege" means the privilege provided to an environmental audit report as provided in this part.

**History:** Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996 ;-- Am. 1997, Act 133, Imd. Eff. Nov. 14, 1997

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14802 Environmental audit and environmental audit report; conduct; creation; privilege and protection from disclosure; exception; testimony; admissibility as evidence.**

Sec. 14802.

(1) The owner or operator of a facility, or an employee or agent of the owner or operator on behalf of the owner or operator, at any time may conduct an environmental audit and may create an environmental audit report.

(2) Except as provided in subsection (3), an environmental audit report created pursuant to this part is privileged and protected from disclosure under this part.

(3) The privilege described in subsection (2) does not extend to any of the following regardless of whether or not they are included within an environmental audit report:

(a) Documents, communication, data, reports, or other information required to be collected, maintained, or made available or reported to a regulatory agency or any other person by statute, rule, ordinance, permit, order, consent agreement, or as otherwise provided by law.

(b) Information obtained by observation, sampling, or monitoring by any regulatory agency.

(c) Pretreatment monitoring results which a publicly owned treatment works or control authority requires any industrial user to report to a publicly owned treatment works or control authority, including, but not limited to, results establishing a violation of the industrial user's discharge permit or applicable local ordinance.

(d) Information legally obtained from a source independent of the environmental audit or from a person who did not obtain the information from the environmental audit.

(e) Machinery and equipment maintenance records.

(f) Information in instances where the privilege is asserted for a fraudulent purpose.

(g) Information in instances where the material shows evidence of noncompliance with state, federal, regional, or local environmental laws, permits, consent agreements, regulations, ordinances, or orders and the owner or operator failed to either take prompt corrective action or eliminate any violation of law identified during the environmental audit within a reasonable time, but not exceeding 3 years after discovery of the noncompliance or violation unless a longer period of time is set forth in a schedule of compliance in an order issued by the department of environmental quality, after notice in the department's calendar, and following the department's determination that acceptable progress is being made.

(4) Except as otherwise provided in this part, a person who conducts an environmental audit and a person to whom the environmental audit results are disclosed shall not be compelled to testify regarding any information obtained solely through the environmental audit which is a privileged portion of the environmental audit report. Except as otherwise provided in this part, the privileged portions of an environmental audit report are not subject to discovery and are not admissible as evidence in any civil or administrative proceeding.

**History:** Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996 ;-- Am. 1997, Act 133, Imd. Eff. Nov. 14, 1997

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14803 Waiver of privilege.**

Sec. 14803.

(1) The privilege provided for in this part may be expressly waived by the person for whom the environmental audit report was prepared. The waiver applies only to the portion or portions of the environmental audit report that are specifically waived.

(2) Disclosure of an environmental audit report and information generated by the environmental audit by the person for whom the environmental audit report was prepared or by the person's employee or agent to any of the following does not waive the privilege provided for in this part:

- (a) An employee of the person.
- (b) A legal representative of the person.
- (c) An agent of the person retained to address an issue or issues raised by the environmental audit.

(3) Disclosure of the environmental audit report or any information generated by the environmental audit under the following circumstances does not waive the privilege provided for in this part:

(a) A disclosure made under the terms of a confidentiality agreement between the person for whom the environmental audit report was prepared and a partner or potential partner, or a transferee or potential transferee of, or a lender or potential lender for, or a trustee of, the business or facility audited, or a disclosure made between a subsidiary and a parent corporation or between members of a partnership, joint venture, or other similarly related entities.

(b) A disclosure made under the terms of a confidentiality agreement between governmental officials and the person for whom the environmental audit report was prepared.

**History:** Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14804 Request for disclosure by state or local law enforcement authorities; objection; petition; in camera hearing; determination by court; disclosure pending appeal.**

Sec. 14804.

(1) A request by state or local law enforcement authorities for disclosure of an environmental audit report shall be made by a written request delivered by certified mail or a demand by lawful subpoena. Within 30 business days after receipt of a request for disclosure or subpoena, the person asserting the privilege may make a written objection to the disclosure of the environmental audit report on the basis that the environmental audit report is privileged. Upon receipt of such an objection, the state or local law enforcement authorities may file with the circuit court, and serve upon the person, a petition requesting an in camera hearing on whether the environmental audit report or portions of the environmental audit report are privileged or subject to disclosure. The motion shall be brought in camera and under seal. The circuit court has jurisdiction over a petition filed under this subsection requesting a hearing. Failure of the person asserting the privilege to make an objection to disclosure waives the privilege as to that person.

(2) Upon the filing of a petition for an in camera hearing under subsection (1), the person asserting the privilege in response to a request for disclosure or subpoena under this section shall provide a copy of the environmental audit report to the court and shall demonstrate in the in camera hearing all of the following:

- (a) The year the environmental audit report was prepared.
- (b) The identity of the person conducting the audit.
- (c) The name of the audited facility or facilities.
- (d) A brief description of the portion or portions of the environmental audit report for which privilege is claimed.

(3) Upon the filing of a petition for an in camera hearing under subsection (1), the court shall issue an order under seal scheduling, within 45 days after the filing of the petition, an in camera hearing to determine whether the environmental audit report or portions of the environmental audit report are privileged or subject to disclosure. The counsel for the state or local law enforcement agency seeking disclosure of the information contained in the environmental audit report and the counsel for the person asserting the privilege shall participate in the in camera hearing but shall not disclose the contents of the environmental audit report for which privilege is claimed unless

the court so orders.

(4) The court, after in camera review, shall require disclosure of material for which privilege is asserted, if the court determines that either of the following exists:

(a) The privilege is asserted for a fraudulent purpose.

(b) Even if subject to the privilege, the material shows evidence of noncompliance with state, federal, regional, or local environmental laws, permits, consent agreements, regulations, ordinances, or orders and the owner or operator failed to either take prompt corrective action or eliminate any violation of law identified during the environmental audit within a reasonable time, but not exceeding 3 years after discovery of the noncompliance or violation unless a longer period of time is set forth in a schedule of compliance in an order issued by the department of environmental quality, after notice in the department's calendar, and following the department's determination that acceptable progress is being made.

(5) The court, after in camera review, shall require disclosure of material for which privilege is asserted if the court determines that the material is not subject to the privilege.

(6) If the court determines under this section that the material is not privileged, but the party asserting the privilege files an application for leave to appeal of this finding, the material, motions, and pleadings shall be disclosed unless the court specifically determines that all or a portion of such information shall be kept under seal during the pendency of the appeal.

**History:** Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996 ;-- Am. 1997, Act 133, Imd. Eff. Nov. 14, 1997

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14805 Criminal proceeding; applicability of privilege.**

Sec. 14805.

The privilege created by this part does not apply to criminal investigations or proceedings. Where an audit report is obtained, reviewed, or used in a criminal proceeding, the privilege created by this part applicable to administrative or civil proceedings is not waived or eliminated.

**History:** Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996 ;-- Am. 1997, Act 133, Imd. Eff. Nov. 14, 1997

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14806 Privilege; burden of proof; stipulation; disclosure of relevant portions of report.**

Sec. 14806.

(1) A person asserting the privilege under this part has the burden of proving a prima facie case as to the privilege. A person seeking disclosure of an environmental audit report has the burden of proving by a preponderance of the evidence that privilege does not exist under this part.

(2) The parties disputing the existence of the privilege may at any time stipulate to entry of an order directing that specific information contained in an environmental audit report is or is not subject to the privilege.

(3) Upon making a disclosure determination under section 14804 or 14805, the court may compel the disclosure only of those portions of an environmental audit report relevant to issues in dispute in the proceeding.

**History:** Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14807 Fraud as misdemeanor; penalty.**

Sec. 14807.

A person who uses this part to commit fraud is guilty of a misdemeanor punishable by a fine of not more than \$25,000.00.

**History:** Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14808 Other privileges not limited.**

Sec. 14808.

This part does not limit, waive, or abrogate either of the following:

(a) The scope or nature of any statutory or common law privilege, including the work product doctrine and the attorney-client privilege.

(b) Any existing ability or authority to challenge privilege under Michigan law.

**History:** Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996 ;-- Am. 1997, Act 133, Imd. Eff. Nov. 14, 1997

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14809 Immunity from civil and criminal penalties and fines.**

Sec. 14809.

(1) A person is immune from any administrative or civil penalties and fines under this act and from criminal penalties and fines for negligent acts or omissions under this act related to a violation of article II and chapters 1 and 3 of article III and the rules promulgated under those articles if the person makes a voluntary disclosure to the appropriate state or local agency. However, the immunity provided for in this section does not apply to any criminal penalties and fines for gross negligence or to any criminal penalties and fines for violations of part 301, 303, 315, or 325 or section 3108 or 3115a. At the time that the disclosure is made to the state or local agency, the person making the voluntary disclosure under this section shall provide information showing that the conditions of subdivisions (a) to (d) are met, supporting his or her claim that the disclosure is voluntary. For the purposes of this section, a disclosure of information by a person under this section is voluntary if all of the following occur:

(a) The disclosure is made promptly after knowledge of the information disclosed is obtained by the person.

(b) The person making the disclosure initiates an appropriate and good-faith effort to achieve compliance, pursues compliance with due diligence, and promptly corrects the noncompliance or condition after discovery of the violation. If evidence shows the noncompliance is the failure to obtain a permit, appropriate and good-faith efforts to correct the noncompliance may be demonstrated by the submittal of a complete permit application within a reasonable time.

(c) The disclosure of the information arises out of an environmental audit.

(d) The environmental audit occurs before the person is made aware that he or she is under investigation by a regulatory agency for potential violations of this act.

(2) There is a rebuttable presumption that a disclosure made pursuant to and in full compliance with this section is voluntary. The presumption of voluntary disclosure under this section may be rebutted by presentation of an adequate showing to the administrative hearing officer or appropriate trier of fact that the disclosure did not satisfy the requirements for a voluntary disclosure under subsection (1). In any administrative or judicial proceeding pursuant to this subsection, the person claiming that a disclosure is voluntary shall provide the supporting information required in subsection (1) and a showing of the appropriate and good-faith effort to achieve compliance, shall pursue compliance with due diligence, and shall promptly correct the noncompliance in the period of time since the date of the disclosure. The state or local agency shall bear the burden of rebutting the presumption of voluntariness. Agency action determining that disclosure was not voluntary shall be considered final agency action subject to judicial review.

(3) Unless a final determination shows that a voluntary disclosure has not occurred, a notice of violation or cease and desist order shall not include any administrative or civil penalty or fine or any criminal penalty or fine for violations for which immunity is provided under this section.

(4) The elimination of administrative or civil penalties or fines or criminal penalties or fines under this section does not apply if the trier of fact finds any of the following:

(a) The person has knowingly committed a criminal act.

(b) The person has committed significant violations that constitute a pattern of continuous or repeated violations of environmental laws, rules, regulations, permit conditions, settlement agreements, or orders of consent or judicial orders and that were due to separate and distinct events giving rise to the violations, within the 3-year period prior to the date of the disclosure. For purposes of this subsection, a pattern of continuous or repeated violations may also be demonstrated by multiple settlement agreements related to substantially the same alleged violations concerning serious instances of noncompliance with environmental laws that occurred within the 3-year period immediately prior to the date of the voluntary disclosure. In determining whether a person has a pattern of continuous or repeated violations under this subsection, the trier of fact shall base the decision on the compliance history of the specific facility at issue.

(c) The violation has resulted in a substantial economic benefit which gives the violator a clear advantage over its business competitors.

(d) The instance of noncompliance resulted in serious harm or in imminent and substantial endangerment to human health or the environment.

(e) The violation is of the terms of an administrative or judicial order.

(5) In those cases where the conditions of a voluntary disclosure are not met but a good-faith effort was made to voluntarily disclose and resolve a violation detected in a voluntary environmental audit, the state and local environmental and law enforcement authorities shall consider the nature and extent of any good-faith effort in deciding the appropriate enforcement response and shall mitigate any civil penalties based on a showing that 1 or more of the conditions for voluntary disclosure have been met.

(6) The immunity provided by this section does not abrogate a person's responsibilities as provided by applicable law to correct the violation, conduct necessary remediation, or pay damages.

(7) In order to receive immunity under this section, a facility conducting an environmental audit under this part shall give notice to the department of the fact that it is planning to commence the audit. The notice shall specify the facility or portion of the facility to be audited, the anticipated time the audit will begin, and the general scope of the audit. The notice may provide notification of more than 1 scheduled environmental audit at a time.

**History:** Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996 ;-- Am. 1997, Act 134, Imd. Eff. Nov. 14, 1997

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14809a Authority of other provisions not limited.**

Sec. 14809a.

Except for the immunity provided in section 14809, this part does not limit or affect the authority of any other provision of this act or any other provision of law.

**History:** Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996

**Popular Name:** Act 451

**Popular Name:** NREPA

### **324.14810 Data base.**

Sec. 14810.

(1) The department of environmental quality shall establish and maintain a data base of the voluntary disclosures made under this part. The data base shall include the number of voluntary disclosures made on an annual basis and shall summarize in general categories the types of violations and the time needed to achieve compliance. The

department of environmental quality shall annually publish a report containing the information in this data base.

(2) Within 5 years after the effective date of this part, the department of environmental quality shall prepare and submit to the standing committees of the legislature with jurisdiction over issues pertaining to natural resources and the environment a report evaluating the effectiveness of this part and specifically detailing whether this part has been effective in encouraging the use of environmental audits and in identifying and correcting environmental problems and conditions.

**History:** Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996

**Popular Name:** Act 451

**Popular Name:** NREPA