

17:7 MICHIGAN ENVIRONMENTAL PROTECTION ACT Part 17 of NREPA
MCL 324.1701 *et seq.*

17:7.1 Purpose

The purpose of the Michigan Environmental Protection Act (MEPA) is to protect the air, water and other natural resources of the State by allowing the court to impose conditions in certain situations to prevent the pollution, impairment or destruction of these resources.

17:7.2 Proceedings

The Attorney General or any person may bring an action in circuit court to request the court to impose conditions where activity impacts natural resources to a level that justifies judicial intervention.

To establish a claim, a plaintiff would have to prove specific facts showing that a natural resource is involved and the impact from the activity on the environment rose to a level to justify judicial impairment. Generally, the court reviews the following factors to determine if intervention is warranted:

- whether the natural resources involved are rare, unique, endangered or have historical significance
- whether the natural resource is easily replaceable
- whether the proposed action will have any significant consequential effect on other natural resources
- whether the direct or indirect consequential impact on animals or vegetation will affect a critical number, considering the nature and location of the wildlife affected.

However, a prima facie claim can also be shown by demonstrating a violation of Part 91 (Soil Erosion and Sedimentation Control), Part 301 (Inland Lakes and Streams), or Part 303 (Wetland Protection) of the Natural Resources and Environmental Protection Act or rules promulgated under those parts.

If the plaintiff makes a prima facie claim, the defendant may show that there was no feasible and prudent alternative to defendant's conduct and that the conduct is consistent with the promotion of public health, safety and welfare in light of the concern for the protection of natural resources

If the court finds for the plaintiffs, it may stop all or part of the activity or impose conditions on the activity to minimize the impact on the environment.

QUESTIONS AND ANSWERS

1: How does Michigan Environmental Protection Act (MEPA) apply to Drain Commissioners?

A: MEPA allows citizens to file an action in circuit court, requesting that the court prevent or make restrictions on an activity to prevent the pollution, impairment or destruction of natural resources. Actions in opposition to a drainage project often include a count under MEPA against the Drainage District.

2: What are the repercussions of a MEPA lawsuit?

A: There are no money damages awarded as a result of a MEPA action, it is a purely equitable claim. In other words, the plaintiff is requesting that an activity be prevented, restricted or mitigated. As an example, a plaintiff may request an injunction preventing work on a drain, as the proposed work will destroy natural resources.