

**SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 5400**

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending sections 8504, 8505, 8513, 11502, 11503, 11504,  
11505, 11506, 11542, 20101, 20114e, and 20115 (MCL 324.8504,  
324.8505, 324.8513, 324.11502, 324.11503, 324.11504, 324.11505,  
324.11506, 324.11542, 324.20101, 324.20114e, and 324.20115),  
sections 8504 and 11542 as amended by 2004 PA 325, section 8505  
as amended by 2006 PA 503, section 8513 as added by 1995 PA 60,  
section 11502 as amended by 2007 PA 212, sections 11503, 11505,  
and 11506 as amended by 2014 PA 24, section 11504 as amended by  
2013 PA 250, section 20101 as amended by 2013 PA 141, section  
20114e as amended by 2012 PA 446, and section 20115 as amended by  
1995 PA 117, and by adding sections 3112e, 11551, 11551a, 11552,  
11553, and 11554.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 3112E. (1) NOTWITHSTANDING SECTIONS 3112 AND 3113, A  
2 PERMIT IS NOT REQUIRED UNDER THIS PART FOR ANY OF THE FOLLOWING:

3 (A) THE USE OF A BENEFICIAL USE BY-PRODUCT FOR BENEFICIAL  
4 USE 3 IN COMPLIANCE WITH PART 115.

5 (B) THE STORAGE OF A BENEFICIAL USE BY-PRODUCT IN COMPLIANCE  
6 WITH PART 115.

7 (2) AS USED IN SUBSECTION (1), "BENEFICIAL USE BY-PRODUCT"  
8 AND "BENEFICIAL USE 3" MEAN THOSE TERMS AS DEFINED IN SECTION  
9 11502.

10 Sec. 8504. (1) A person shall not manufacture or distribute  
11 fertilizer in this state, except specialty fertilizer and soil  
12 conditioners, until the appropriate groundwater protection fee  
13 provided in section 8715 has been submitted, and except as  
14 authorized by a license to manufacture or distribute issued by  
15 the department pursuant to part 13. An application for a license  
16 shall be accompanied by ~~a payment of~~ a fee of \$100.00 for each of  
17 the following:

18 (a) Each fixed location at which fertilizer is manufactured  
19 in this state.

20 (b) Each mobile unit used to manufacture fertilizer in this  
21 state.

22 (c) Each location out of ~~the~~ **THIS** state that applies  
23 labeling showing **AN** out-of-state origin of fertilizer distributed  
24 in this state to nonlicensees.

25 (2) An application for a license to manufacture or  
26 distribute fertilizer shall include **ALL OF THE FOLLOWING**:

1 (a) The name and address of the applicant.

2 (b) The name and address of each bulk distribution point in  
3 the state not licensed for fertilizer manufacture or  
4 distribution. The name and address shown on the license shall be  
5 shown on all labels, pertinent invoices, and bulk storage for  
6 fertilizers distributed by the licensee in this state.

7 (3) **IF THE FERTILIZER IS A BENEFICIAL USE BY-PRODUCT**  
8 **INTENDED FOR BENEFICIAL USE 3 UNDER PART 115, THE APPLICATION**  
9 **SHALL ALSO INCLUDE THE INFORMATION IDENTIFIED IN SECTION**  
10 **11551(7).**

11 (4) ~~(3)~~—The licensee shall inform the director in writing of  
12 additional distribution points established during the period of  
13 the license.

14 (5) ~~(4)~~—A distributor is not required to obtain a license if  
15 the distributor is selling fertilizer of a distributor or a  
16 manufacturer licensed under this part.

17 (6) ~~(5)~~—All licenses to manufacture or distribute fertilizer  
18 expire on December 31 of each year.

19 Sec. 8505. (1) A person shall not distribute a specialty  
20 fertilizer or soil conditioner unless it is registered with the  
21 department. An application **FOR REGISTRATION** listing each brand  
22 and product name of each grade of specialty fertilizer or soil  
23 conditioner shall be made on a form furnished by the director.  
24 ~~and~~ **AN APPLICATION** shall be accompanied with the fees described  
25 in subsection ~~(2)~~ **(4)** for each brand and product name of each  
26 grade. Labels for each brand and product name of each grade shall  
27 accompany the application.

1           (2) IF THE SPECIALTY FERTILIZER OR SOIL CONDITIONER IS A  
2 BENEFICIAL USE BY-PRODUCT INTENDED FOR BENEFICIAL USE 3 UNDER  
3 PART 115, THE APPLICATION SHALL ALSO INCLUDE THE INFORMATION  
4 IDENTIFIED IN SECTION 11551(7).

5           (3) Upon approval of an application by the director, a copy  
6 of the registration approval shall be furnished to the applicant.  
7 All registrations expire on December 31 of each year.

8           (4) ~~(2)~~—A person applying for a registration under  
9 subsection (1) shall pay the following annual fees for each brand  
10 and product name of each grade:

11           (a) Registration fee of \$25.00.

12           (b) Appropriate groundwater ~~and freshwater~~ protection fees  
13 **FEE** provided for in section 8715.

14           (5) ~~(3)~~—A distributor is not required to register a brand of  
15 fertilizer that is registered under this part by another person,  
16 if the label does not differ in any respect.

17           (6) ~~(4)~~—A manufacturer or distributor of custom blend  
18 specialty fertilizers for home lawns, golf courses, recreational  
19 areas, or other nonfarm areas ~~shall~~ **IS** not ~~be~~ required to  
20 register each grade distributed but shall license their firm on  
21 an application furnished by the director for an annual fee of  
22 \$100.00 and shall label the fertilizer as provided in section  
23 8502. The label of each fertilizer distributed under this  
24 subsection shall be maintained by the manufacturer or distributor  
25 for 1 year for inspection by the director.

26           (7) ~~(5)~~—A manufacturer or distributor of soil conditioners  
27 blended according to specifications provided to a blender or

1 blended as specifically requested by the consumer prior to  
2 blending shall either register each brand or blend distributed or  
3 license its firm on an application furnished by the director for  
4 an annual fee of \$100.00 and shall label the soil conditioner as  
5 provided in section 8502. The label of each soil conditioner  
6 distributed under this subsection shall be maintained by the  
7 manufacturer or distributor for 1 year for inspection by the  
8 director.

9       Sec. 8513. (1) The department may promulgate rules regarding  
10 the bulk storage of fertilizers.

11       (2) IF STORAGE OF A MATERIAL USED AS A BENEFICIAL USE BY-  
12 PRODUCT FOR BENEFICIAL USE 3 UNDER PART 115 MEETS THE STORAGE  
13 REQUIREMENTS OF THAT PART, THEN THE STORAGE IS EXEMPT FROM  
14 REGULATION NO. 641, COMMERCIAL FERTILIZER BULK STORAGE, R  
15 285.641.1 TO R 285.641.18 OF THE MICHIGAN ADMINISTRATIVE CODE.

16       Sec. 11502. (1) ~~"Applicant" includes any person.~~ "AGRONOMIC  
17 RATE" MEANS A RATE THAT MEETS BOTH OF THE FOLLOWING REQUIREMENTS:

18       (A) IS GENERALLY RECOGNIZED BY THE AGRICULTURAL COMMUNITY OR  
19 IS CALCULATED FOR A PARTICULAR AREA OF LAND TO IMPROVE THE  
20 PHYSICAL NATURE OF SOIL, SUCH AS STRUCTURE, TILTH, WATER  
21 RETENTION, PH, OR POROSITY, OR TO PROVIDE MACRONUTRIENTS OR  
22 MICRONUTRIENTS IN AN AMOUNT NOT MATERIALLY IN EXCESS OF THAT  
23 NEEDED BY THE CROP, FOREST, OR VEGETATION GROWN ON THE LAND.

24       (B) TAKES INTO ACCOUNT AND MINIMIZES RUNOFF OF BENEFICIAL  
25 USE BY-PRODUCTS TO SURFACE WATER OR NEIGHBORING PROPERTIES, THE  
26 PERCOLATION OF EXCESS NUTRIENTS BEYOND THE ROOT ZONE, AND THE  
27 LIBERATION OF METALS FROM THE SOIL INTO GROUNDWATER.

1           (2) "Ashes" means the residue from the burning of wood,  
2 ~~coal, coke, refuse,~~ SCRAP WOOD, TIRES, BIOMASS, wastewater  
3 sludge, FOSSIL FUELS INCLUDING COAL OR COKE, or other combustible  
4 materials.

5           (3) "BENEFICIAL USE 1" MEANS USE AS AGGREGATE, ROAD  
6 MATERIAL, OR BUILDING MATERIAL THAT IN ULTIMATE USE IS OR WILL BE  
7 BONDED OR ENCAPSULATED BY CEMENT, LIMES, OR ASPHALT.

8           (4) "BENEFICIAL USE 2" MEANS USE AS ANY OF THE FOLLOWING:

9           (A) CONSTRUCTION FILL AT NONRESIDENTIAL PROPERTY THAT MEETS  
10 ALL OF THE FOLLOWING REQUIREMENTS:

11           (i) IS PLACED AT LEAST 4 FEET ABOVE THE SEASONAL GROUNDWATER  
12 TABLE.

13           (ii) DOES NOT COME INTO CONTACT WITH A SURFACE WATER BODY.

14           (iii) IS COVERED BY CONCRETE, ASPHALT PAVEMENT, OR OTHER  
15 MATERIAL APPROVED BY THE DEPARTMENT.

16           (iv) DOES NOT EXCEED 4 FEET IN THICKNESS, EXCEPT FOR AREAS  
17 WHERE EXCEEDANCES ARE INCIDENTAL TO VARIATIONS IN THE EXISTING  
18 TOPOGRAPHY. THIS SUBPARAGRAPH DOES NOT APPLY TO CONSTRUCTION FILL  
19 PLACED UNDERNEATH A BUILDING OR OTHER STRUCTURE.

20           (B) ROAD BASE OR SOIL STABILIZER THAT DOES NOT EXCEED 4 FEET  
21 IN THICKNESS EXCEPT FOR AREAS WHERE EXCEEDANCES ARE INCIDENTAL TO  
22 VARIATIONS IN EXISTING TOPOGRAPHY, IS PLACED AT LEAST 4 FEET  
23 ABOVE THE SEASONAL GROUNDWATER TABLE, DOES NOT COME INTO CONTACT  
24 WITH A SURFACE WATER BODY, AND IS COVERED BY CONCRETE, ASPHALT  
25 PAVEMENT, OR OTHER MATERIAL APPROVED BY THE DEPARTMENT.

26           (C) ROAD SHOULDER MATERIAL THAT DOES NOT EXCEED 4 FEET IN  
27 THICKNESS EXCEPT FOR AREAS WHERE EXCEEDANCES ARE INCIDENTAL TO

1 VARIATIONS IN EXISTING TOPOGRAPHY, IS PLACED AT LEAST 4 FEET  
2 ABOVE THE SEASONAL GROUNDWATER TABLE, DOES NOT COME INTO CONTACT  
3 WITH A SURFACE WATER BODY, IS SLOPED, AND IS COVERED BY ASPHALT  
4 PAVEMENT, CONCRETE, 6 INCHES OF GRAVEL, OR OTHER MATERIAL  
5 APPROVED BY THE DEPARTMENT.

6 (5) "BENEFICIAL USE 3" MEANS APPLIED TO LAND AS A FERTILIZER  
7 OR SOIL CONDITIONER UNDER PART 85 OR A LIMING MATERIAL UNDER 1955  
8 PA 162, MCL 290.531 TO 290.538, IF ALL OF THE FOLLOWING  
9 REQUIREMENTS ARE MET:

10 (A) THE MATERIAL IS APPLIED AT AN AGRONOMIC RATE CONSISTENT  
11 WITH GENERALLY ACCEPTED AGRICULTURAL AND MANAGEMENT PRACTICES.

12 (B) THE USE, PLACEMENT, OR STORAGE AT THE LOCATION OF USE  
13 DOES NOT DO ANY OF THE FOLLOWING:

14 (i) VIOLATE PART 55 OR CREATE A NUISANCE.

15 (ii) CAUSE GROUNDWATER TO NO LONGER BE FIT FOR 1 OR MORE  
16 PROTECTED USES AS DEFINED IN R 323.2202 OF THE MICHIGAN  
17 ADMINISTRATIVE CODE.

18 (iii) CAUSE A VIOLATION OF A PART 31 SURFACE WATER QUALITY  
19 STANDARD.

20 (6) "BENEFICIAL USE 4" MEANS ANY OF THE FOLLOWING USES:

21 (A) TO STABILIZE, NEUTRALIZE, SOLIDIFY, OR OTHERWISE TREAT  
22 WASTE FOR ULTIMATE DISPOSAL AT A FACILITY LICENSED UNDER THIS  
23 PART OR PART 111.

24 (B) TO TREAT WASTEWATER, WASTEWATER TREATMENT SLUDGE, OR  
25 WASTEWATER SLUDGE IN COMPLIANCE WITH PART 31 OR THE FEDERAL WATER  
26 POLLUTION CONTROL ACT, 33 USC 1251 TO 1387 AT A PRIVATE OR  
27 PUBLICLY OWNED WASTEWATER TREATMENT PLANT.

1 (C) TO STABILIZE, NEUTRALIZE, SOLIDIFY, CAP, OR OTHERWISE  
2 REMEDIATE HAZARDOUS SUBSTANCES OR CONTAMINANTS AS PART OF A  
3 RESPONSE ACTIVITY IN COMPLIANCE WITH PART 201, PART 213, OR THE  
4 COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY  
5 ACT OF 1980, 42 USC 9601 TO 9657, OR A CORRECTIVE ACTION IN  
6 COMPLIANCE WITH PART 111 OR THE SOLID WASTE DISPOSAL ACT, 42 USC  
7 6901 TO 6992K.

8 (D) AS CONSTRUCTION MATERIAL AT A LANDFILL LICENSED UNDER  
9 THIS PART.

10 (7) "BENEFICIAL USE 5" MEANS BLENDED WITH INERT MATERIALS OR  
11 WITH COMPOST AND USED TO MANUFACTURE SOIL.

12 (8) "BENEFICIAL USE BY-PRODUCT" MEANS THE FOLLOWING  
13 MATERIALS IF THE MATERIALS ARE STORED FOR BENEFICIAL USE OR ARE  
14 USED BENEFICIALLY AS SPECIFIED AND THE REQUIREMENTS OF SECTION  
15 11551(1) ARE MET:

16 (A) COAL BOTTOM ASH OR WOOD ASH USED FOR BENEFICIAL USE 3 OR  
17 WOOD ASH OR COAL ASH, EXCEPT FOR SEGREGATED FLUE GAS  
18 DESULFURIZATION MATERIAL, USED FOR BENEFICIAL USE 1, 2, OR 4.

19 (B) PULP AND PAPER MILL ASH USED FOR BENEFICIAL USE 1, 2, 3,  
20 OR 4.

21 (C) MIXED WOOD ASH USED FOR BENEFICIAL USE 1, 2, 3, OR 4.

22 (D) CEMENT KILN DUST USED AS A FLUE GAS SCRUBBING REAGENT OR  
23 FOR BENEFICIAL USE 1, 2, 3, OR 4.

24 (E) LIME KILN DUST USED AS A FLUE GAS SCRUBBING REAGENT OR  
25 FOR BENEFICIAL USE 1, 2, 3, OR 4.

26 (F) STAMP SANDS USED FOR BENEFICIAL USE 1 OR 2.

27 (G) FOUNDRY SAND FROM FERROUS OR ALUMINUM FOUNDRIES USED FOR

1 BENEFICIAL USE 1, 2, 3, 4, OR 5.

2 (H) PULP AND PAPER MILL MATERIAL, OTHER THAN THE FOLLOWING,  
3 USED FOR BENEFICIAL USE 3:

4 (i) REJECTS, FROM SCREENS, CLEANERS, AND MILLS DISPERSION  
5 EQUIPMENT, CONTAINING MORE THAN DE MINIMIS AMOUNTS OF PLASTIC.

6 (ii) SCRAP PAPER.

7 (I) SPENT MEDIA FROM SANDBLASTING, WITH UNCONTAMINATED SAND,  
8 NEWLY MANUFACTURED, UNPAINTED STEEL USED FOR BENEFICIAL USE 1 OR  
9 2.

10 (J) DEWATERED CONCRETE GRINDING SLURRY FROM PUBLIC  
11 TRANSPORTATION AGENCY ROAD PROJECTS USED FOR BENEFICIAL USE 1, 2,  
12 3, OR 4.

13 (K) LIME SOFTENING RESIDUALS FROM THE TREATMENT AND  
14 CONDITIONING OF WATER FOR DOMESTIC USE OR FROM A COMMUNITY WATER  
15 SUPPLY USED FOR BENEFICIAL USE 3 OR 4.

16 (L) SOIL WASHED OR OTHERWISE REMOVED FROM SUGAR BEETS THAT IS  
17 USED FOR BENEFICIAL USE 3.

18 (M) SEGREGATED FLUE GAS DESULFURIZATION MATERIAL USED FOR  
19 BENEFICIAL USE 1 OR 3.

20 (N) MATERIALS AND USES APPROVED BY THE DEPARTMENT UNDER  
21 SECTION 11553(3) OR (4). APPROVAL OF MATERIALS AND USES BY THE  
22 DEPARTMENT UNDER SECTION 11553(3) OR (4) DOES NOT REQUIRE THE USE  
23 OF THOSE MATERIALS BY ANY GOVERNMENTAL ENTITY OR ANY OTHER  
24 PERSON.

25 (9) ~~(3)~~—"Beverage container" means an airtight metal, glass,  
26 paper, or plastic container, or a container composed of a  
27 combination of these materials, which, at the time of sale,

1 contains 1 gallon or less of any of the following:

2 (a) A soft drink, soda water, carbonated natural or mineral  
3 water, or other nonalcoholic carbonated drink.

4 (b) A beer, ale, or other malt drink of whatever alcoholic  
5 content.

6 (c) A mixed wine drink or a mixed spirit drink.

7 **(10)** ~~(4)~~—"Bond" means a financial instrument executed on a  
8 form approved by the department, including a surety bond from a  
9 surety company authorized to transact business in this state, a  
10 certificate of deposit, a cash bond, an irrevocable letter of  
11 credit, insurance, a trust fund, an escrow account, or a  
12 combination of any of these instruments in favor of the  
13 department. The owner or operator of a disposal area who is  
14 required to establish a bond under ~~other~~ **ANOTHER** state **STATUTE** or  
15 **A** federal statute may petition the department to allow such a  
16 bond to meet the requirements of this part. The department shall  
17 approve a bond established under ~~other~~ **ANOTHER** state **STATUTE** or **A**  
18 federal statute if the bond provides equivalent funds and access  
19 by the department as other financial instruments allowed by this  
20 subsection.

21 **(11) "CEMENT KILN DUST" MEANS PARTICULATE MATTER COLLECTED**  
22 **IN AIR EMISSION CONTROL DEVICES SERVING PORTLAND CEMENT KILNS.**

23 **(12)** ~~(5)~~—"Certificate of deposit" means a negotiable  
24 certificate of deposit held by a bank or other financial  
25 institution regulated and examined by a state or federal agency,  
26 the value of which is fully insured by an agency of the United  
27 States government. A certificate of deposit used to fulfill the

1 requirements of this part shall be in the sole name of the  
 2 department with a maturity date of not less than 1 year and shall  
 3 be renewed not less than 60 days before the maturity date. An  
 4 applicant who uses a certificate of deposit as a bond shall  
 5 receive any accrued interest on that certificate of deposit upon  
 6 release of the bond by the department.

7 (13) ~~(6)~~ "Certified health department" means a city, county,  
 8 or district department of health that is specifically delegated  
 9 authority by the department to perform designated activities as  
 10 prescribed by this part.

11 (14) ~~(7)~~ "Coal ~~or wood~~ ash" means ~~either or both of the~~  
 12 ~~following:~~ **THE MATERIAL RECOVERED FROM SYSTEMS FOR THE CONTROL OF**  
 13 **AIR POLLUTION FROM, OR THE NONCOMBUSTED RESIDUE REMAINING AFTER,**  
 14 **THE COMBUSTION OF COAL, INCLUDING, BUT NOT LIMITED TO, BOTTOM**  
 15 **ASH, FLY ASH, BOILER SLAG, OR FLUIDIZED-BED COMBUSTION ASH. FOR**  
 16 **BENEFICIAL USE 2, COAL ASH DOES NOT INCLUDE COAL FLY ASH EXCEPT**  
 17 **FOR THE FOLLOWING IF USED AT NONRESIDENTIAL PROPERTY:**

18 (A) CLASS C FLY ASH UNDER ASTM STANDARD C618-12A.

19 (B) CLASS F FLY ASH UNDER ASTM STANDARD C618-12A IF THAT FLY  
 20 ASH FORMS A POZZOLANIC-STABILIZED MIXTURE BY BEING BLENDED WITH  
 21 LIME, PORTLAND CEMENT, OR CEMENT KILN DUST.

22 (C) A COMBINATION OF CLASS C FLY ASH AND CLASS F FLY ASH  
 23 UNDER ASTM STANDARD C618-12A IF THAT COMBINATION FORMS A  
 24 POZZOLANIC-STABILIZED MIXTURE BY BEING BLENDED WITH LIME,  
 25 PORTLAND CEMENT, OR CEMENT KILN DUST AND IS USED AS A ROAD BASE,  
 26 SOIL STABILIZER, OR ROAD SHOULDER MATERIAL UNDER SUBSECTION  
 27 (4) (B) OR (C).

1 ~~—— (a) The residue remaining after the ignition of coal or~~  
2 ~~wood, or both, and may include noncombustible materials,~~  
3 ~~otherwise referred to as bottom ash.~~

4 ~~—— (b) The airborne residues from burning coal or wood, or~~  
5 ~~both, that are finely divided particles entrained in flue gases~~  
6 ~~arising from a combustion chamber, otherwise referred to as fly~~  
7 ~~ash.~~

8           **(15) "COAL BOTTOM ASH" MEANS ASH PARTICLES FROM THE**  
9 **COMBUSTION OF COAL THAT ARE TOO LARGE TO BE CARRIED IN FLUE GASES**  
10 **AND THAT COLLECT ON FURNACE WALLS OR AT THE BOTTOM OF THE**  
11 **FURNACE.**

12           **(16) ~~(8)~~**"Collection center" means a tract of land,  
13 building, unit, or appurtenance or combination thereof that is  
14 used to collect junk motor vehicles and farm implements under  
15 section 11530.

16           **(17) ~~(9)~~**"Composting facility" means a facility where  
17 composting of yard clippings or other organic materials occurs  
18 using mechanical handling techniques such as physical turning,  
19 windrowing, or aeration or using other management techniques  
20 approved by the director.

21           **(18) ~~(10)~~**"Consistency review" means evaluation of the  
22 administrative and technical components of an application for a  
23 permit or license or evaluation of operating conditions in the  
24 course of inspection, for the purpose of determining consistency  
25 with the requirements of this part, rules promulgated under this  
26 part, and approved plans and specifications.

27           **(19) ~~(11)~~**"Corrective action" means the investigation,

1 assessment, cleanup, removal, containment, isolation, treatment,  
 2 or monitoring of constituents, as defined in a facility's  
 3 approved hydrogeological monitoring plan, released into the  
 4 environment from a disposal area, or the taking of other actions  
 5 related to the release as may be necessary to prevent, minimize,  
 6 or mitigate injury to the public health, safety, or welfare, the  
 7 environment, or natural resources that is consistent with 42 USC  
 8 6941 to 6949a and regulations promulgated thereunder.

9 Sec. 11503. (1) "De minimis" refers to a small amount of  
 10 material or number of items, as applicable, ~~commingled and~~  
 11 **INCIDENTALLY COMMINGLED WITH INERT MATERIAL FOR BENEFICIAL USE**  
 12 **BY-PRODUCTS, OR** incidentally disposed of with other solid waste.

13 (2) "Department", **SUBJECT TO SECTION 11554**, means the  
 14 department of environmental quality.

15 (3) "Director" means the director of the department.

16 (4) "Discharge" includes, but is not limited to, any  
 17 spilling, leaking, pumping, pouring, emitting, emptying,  
 18 discharging, injecting, escaping, leaching, dumping, or disposing  
 19 of a substance into the environment ~~which~~ **THAT** is or may become  
 20 injurious to the public health, safety, or welfare, or to the  
 21 environment.

22 (5) "Disposal area" means 1 or more of the following at a  
 23 location as defined by the boundary identified in its  
 24 construction permit or engineering plans approved by the  
 25 department:

26 (a) A solid waste transfer facility.

27 (b) ~~Incinerator~~ **AN INCINERATOR.**

- 1           (c) ~~Sanitary~~ **A SANITARY** landfill.
- 2           (d) ~~Processing~~ **A PROCESSING** plant.
- 3           (e) ~~Other~~ **ANY OTHER** solid waste handling or disposal
- 4 facility utilized in the disposal of solid waste. However, a
- 5 waste diversion center is not a disposal area.
- 6           (6) "Diverted waste" means waste that meets all of the
- 7 following requirements:
- 8           (a) Is generated by households, businesses, or governmental
- 9 entities.
- 10           (b) Can lawfully be disposed of at a licensed sanitary
- 11 landfill or municipal solid waste incinerator.
- 12           (c) Is separated from other waste.
- 13           (d) Is 1 or more of the following:
- 14           (i) Hazardous material.
- 15           (ii) Liquid waste.
- 16           (iii) Pharmaceuticals.
- 17           (iv) Electronics.
- 18           (v) Batteries.
- 19           (vi) Light bulbs.
- 20           (vii) Pesticides.
- 21           (viii) Thermostats, switches, thermometers, or other devices
- 22 that contain elemental mercury.
- 23           (ix) Sharps.
- 24           (x) Other wastes approved by the department that can be
- 25 readily separated from solid waste for diversion to preferred
- 26 methods of management and disposal.
- 27           (7) "Enforceable mechanism" means a legal method whereby ~~the~~

1 **THIS** state, a county, a municipality, or another person is  
2 authorized to take action to guarantee compliance with an  
3 approved county solid waste management plan. Enforceable  
4 mechanisms include contracts, intergovernmental agreements, laws,  
5 ordinances, rules, and regulations.

6 (8) "Escrow account" means an account **THAT IS** managed by a  
7 bank or other financial institution whose account operations are  
8 regulated and examined by a federal or state agency and ~~which~~  
9 **THAT** complies with section 11523b.

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

12 (10) "Farm operation" means that term as defined in section  
13 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

14 (11) "Financial assurance" means the mechanisms used to  
15 demonstrate that the funds necessary to meet the cost of closure,  
16 postclosure maintenance and monitoring, and corrective action  
17 will be available whenever they are needed.

18 (12) "Financial test" means a corporate or local government  
19 financial test or guarantee approved for type II landfills under  
20 42 USC 6941 to 6949a and regulations promulgated ~~under 42 USC~~  
21 ~~6941 to 6949a.~~ **THEREUNDER.** An owner or operator may use a single  
22 financial test for more than 1 facility. Information submitted to  
23 the department to document compliance with the test shall include  
24 a list showing the name and address of each facility and the  
25 amount of funds assured by the test for each facility. For  
26 purposes of the financial test, the owner or operator shall  
27 aggregate the sum of the closure, postclosure, and corrective

1 action costs it seeks to assure with any other environmental  
2 obligations assured by a financial test under state or federal  
3 law.

4 (13) "FLUE GAS DESULFURIZATION MATERIAL" MEANS THE MATERIAL  
5 RECOVERED FROM AIR POLLUTION CONTROL SYSTEMS THAT CAPTURE SULFUR  
6 DIOXIDE FROM THE COMBUSTION OF WOOD, COAL, OR FOSSIL FUELS, OR  
7 OTHER COMBUSTIBLE MATERIALS, IF THE OTHER COMBUSTIBLE MATERIALS  
8 CONSTITUTE LESS THAN 50% BY WEIGHT OF THE TOTAL MATERIAL  
9 COMBUSTED AND THE DEPARTMENT DETERMINES IN WRITING THAT THE OTHER  
10 COMBUSTIBLE MATERIALS DO NOT MATERIALLY AFFECT THE CHARACTER OF  
11 THE RESIDUE. FLUE GAS DESULFURIZATION MATERIAL INCLUDES SYNTHETIC  
12 GYPSUM.

13 (14) ~~(13)~~ "Food processing residuals" means any of the  
14 following:

15 (a) Residuals of fruits, vegetables, aquatic plants, or  
16 field crops.

17 (b) Otherwise unusable parts of fruits, vegetables, aquatic  
18 plants, or field crops from the processing thereof.

19 (c) Otherwise unusable food products ~~which~~ THAT do not meet  
20 size, quality, or other product specifications and ~~which~~ THAT  
21 were intended for human or animal consumption.

22 (15) "FOUNDRY SAND" MEANS SILICA SAND USED IN THE METAL  
23 CASTING PROCESS, INCLUDING BINDING MATERIAL OR CARBONACEOUS  
24 ADDITIVES, FROM FERROUS OR NONFERROUS FOUNDRIES.

25 (16) "GAAMPS" MEANS THE GENERALLY ACCEPTED AGRICULTURAL AND  
26 MANAGEMENT PRACTICES UNDER THE MICHIGAN RIGHT TO FARM ACT, 1981  
27 PA 93, MCL 286.471 TO 286.474.

1           (17) ~~(14)~~ "Garbage" means rejected food wastes including  
2 waste accumulation of animal, fruit, or vegetable matter used or  
3 intended for food or that results from the preparation, use,  
4 cooking, dealing in, or storing of meat, fish, fowl, fruit, or  
5 vegetable matter.

6           ~~(15) "Scrap wood" means wood or wood product that is 1 or  
7 more of the following:~~

8           ~~(a) Plywood, pressed board, oriented strand board, or any  
9 other wood or wood product mixed with glue or filler.~~

10          ~~(b) Wood or wood product treated with creosote or  
11 pentachlorophenol.~~

12          ~~(c) Any other wood or wood product designated as scrap wood  
13 in rules promulgated by the department.~~

14          ~~(16) "Treated wood" means wood or wood product that has been  
15 treated with 1 or more of the following:~~

16          ~~(a) Chromated copper arsenate (CCA).~~

17          ~~(b) Ammoniacal copper quat (ACQ).~~

18          ~~(c) Ammoniacal copper zinc arsenate (ACZA).~~

19          ~~(d) Any other chemical designated in rules promulgated by  
20 the department.~~

21          ~~(17) "Wood" means trees, branches, bark, lumber, pallets,  
22 wood chips, sawdust, or other wood or wood product but does not  
23 include scrap wood, treated wood, painted wood or painted wood  
24 product, or any wood or wood product that has been contaminated  
25 during manufacture or use.~~

26           Sec. 11504. (1) "Health officer" means a full-time  
27 administrative officer of a certified ~~city, county, or district~~

1 ~~department of health~~ DEPARTMENT.

2 (2) "Inert material" means ~~a substance that will not~~  
3 ~~decompose, dissolve, or in any other way form a contaminated~~  
4 ~~leachate upon contact with water, or other liquids determined by~~  
5 ~~the department as likely to be found at the disposal area,~~  
6 ~~percolating through the substance.~~ ANY OF THE FOLLOWING:

7 (A) ROCK.

8 (B) TREES, STUMPS, AND OTHER SIMILAR LAND-CLEARING DEBRIS,  
9 IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

10 (i) THE DEBRIS IS BURIED ON THE SITE OF ORIGIN OR ANOTHER  
11 SITE, WITH THE APPROVAL OF THE OWNER OF THE SITE.

12 (ii) THE DEBRIS IS NOT BURIED IN A WETLAND OR FLOODPLAIN.

13 (iii) THE DEBRIS IS PLACED AT LEAST 3 FEET ABOVE THE  
14 GROUNDWATER TABLE AS OBSERVED AT THE TIME OF PLACEMENT.

15 (iv) THE PLACEMENT OF THE DEBRIS DOES NOT VIOLATE FEDERAL,  
16 STATE, OR LOCAL LAW OR CREATE A NUISANCE.

17 (C) UNCONTAMINATED EXCAVATED SOIL OR DREDGED SEDIMENT.  
18 EXCAVATED SOIL OR DREDGED SEDIMENT IS CONSIDERED UNCONTAMINATED  
19 IF IT DOES NOT CONTAIN MORE THAN DE MINIMIS AMOUNTS OF SOLID  
20 WASTE AND 1 OF THE FOLLOWING APPLIES:

21 (i) THE SOIL OR SEDIMENT IS NOT CONTAMINATED BY A HAZARDOUS  
22 SUBSTANCE AS A RESULT OF HUMAN ACTIVITY. SOIL OR SEDIMENT THAT  
23 NATURALLY CONTAINS ELEVATED LEVELS OF HAZARDOUS SUBSTANCES ABOVE  
24 UNRESTRICTED RESIDENTIAL OR ANY OTHER PART 201 GENERIC SOIL  
25 CLEANUP CRITERIA IS NOT CONSIDERED CONTAMINATED FOR PURPOSES OF  
26 THIS SUBDIVISION. A SOIL OR SEDIMENT ANALYSIS IS NOT REQUIRED  
27 UNDER THIS SUBPARAGRAPH IF, BASED ON PAST LAND USE, THERE IS NO

1 REASON TO BELIEVE THAT THE SOIL OR SEDIMENT IS CONTAMINATED.

2 (ii) FOR ANY HAZARDOUS SUBSTANCE THAT COULD REASONABLY BE  
3 EXPECTED TO BE PRESENT AS A RESULT OF PAST LAND USE AND HUMAN  
4 ACTIVITY, THE SOIL OR SEDIMENT DOES NOT EXCEED THE BACKGROUND  
5 CONCENTRATION, AS THAT TERM IS DEFINED IN PART 201.

6 (iii) FOR ANY HAZARDOUS SUBSTANCE THAT COULD REASONABLY BE  
7 EXPECTED TO BE PRESENT AS A RESULT OF PAST LAND USE AND HUMAN  
8 ACTIVITY, THE SOIL OR SEDIMENT FALLS BELOW PART 201 GENERIC  
9 RESIDENTIAL SOIL DIRECT CONTACT CLEANUP CRITERIA AND HAZARDOUS  
10 SUBSTANCES IN LEACHATE FROM THE SOIL OR SEDIMENT, USING, AT THE  
11 OPTION OF THE GENERATOR, EPA METHOD 1311, 1312, OR ANY OTHER  
12 LEACHING PROTOCOL APPROVED BY THE DEPARTMENT, FALL BELOW PART 201  
13 GENERIC RESIDENTIAL HEALTH BASED GROUNDWATER DRINKING WATER  
14 VALUES OR CRITERIA, AND THE SOIL OR SEDIMENT WOULD NOT CAUSE A  
15 VIOLATION OF ANY SURFACE WATER QUALITY STANDARD ESTABLISHED UNDER  
16 PART 31 AT THE AREA OF PLACEMENT, DISPOSAL, OR USE.

17 (D) EXCAVATED SOIL FROM A SITE OF ENVIRONMENTAL  
18 CONTAMINATION, CORRECTIVE ACTION, OR RESPONSE ACTIVITY IF THE  
19 SOIL IS NOT A LISTED HAZARDOUS WASTE UNDER PART 111 AND IF  
20 HAZARDOUS SUBSTANCES IN THE SOIL DO NOT EXCEED GENERIC SOIL  
21 CLEANUP CRITERIA FOR UNRESTRICTED RESIDENTIAL USE AS DEFINED IN  
22 PART 201 OR BACKGROUND CONCENTRATION AS DEFINED IN PART 201, AS  
23 APPLICABLE.

24 (E) CONSTRUCTION BRICK, MASONRY, PAVEMENT, OR BROKEN  
25 CONCRETE THAT IS REUSED FOR FILL, RIP RAP, SLOPE STABILIZATION,  
26 OR OTHER CONSTRUCTION, IF ALL OF THE FOLLOWING CONDITIONS ARE  
27 MET:

1           (i) THE USE OF THE MATERIAL DOES NOT VIOLATE SECTION 3108,  
2 PART 301, OR PART 303.

3           (ii) THE MATERIAL IS NOT MATERIALLY CONTAMINATED. TYPICAL  
4 SURFACE OIL STAINING ON PAVEMENT AND CONCRETE FROM DRIVEWAYS,  
5 ROADWAYS, AND PARKING LOTS IS NOT MATERIAL CONTAMINATION.  
6 MATERIAL COVERED IN WHOLE OR IN PART WITH LEAD-BASED PAINT IS  
7 MATERIALLY CONTAMINATED.

8           (iii) THE MATERIAL DOES NOT INCLUDE EXPOSED REINFORCING BARS.

9           (F) PORTLAND CEMENT CLINKER PRODUCED BY A CEMENT KILN USING  
10 WOOD, FOSSIL FUELS, OR SOLID WASTE AS A FUEL OR FEEDSTOCK, BUT  
11 NOT INCLUDING CEMENT KILN DUST GENERATED IN THE PROCESS.

12           (G) ASPHALT PAVEMENT OR CONCRETE PAVEMENT THAT MEETS ALL OF  
13 THE FOLLOWING REQUIREMENTS:

14           (i) HAS BEEN REMOVED FROM A PUBLIC RIGHT-OF-WAY.

15           (ii) HAS BEEN STOCKPILED OR CRUSHED FOR REUSE AS AGGREGATE  
16 MATERIAL.

17           (iii) DOES NOT INCLUDE EXPOSED REINFORCEMENT BARS.

18           (H) CUTTINGS, DRILLING MATERIALS, AND FLUIDS USED TO DRILL  
19 OR COMPLETE A WELL INSTALLED PURSUANT TO PART 127 OF THE PUBLIC  
20 HEALTH CODE, 1978 PA 368, MCL 333.12701 TO 333.12771, IF THE  
21 LOCATION OF THE WELL IS NOT A FACILITY UNDER PART 201.

22           (I) ANY MATERIAL DETERMINED BY THE DEPARTMENT UNDER SECTION  
23 11553(5) OR (6) TO BE AN INERT MATERIAL, EITHER FOR GENERAL USE  
24 OR FOR A PARTICULAR USE.

25           (3) "Insurance" means insurance that conforms to the  
26 requirements of 40 CFR 258.74(d) provided by an insurer who has a  
27 certificate of authority from the director of insurance and

1 financial services to sell this line of coverage. An applicant  
2 for an operating license shall submit evidence of the required  
3 coverage by submitting both of the following to the department:

4 (a) A certificate of insurance that uses wording approved by  
5 the department.

6 (b) A certified true and complete copy of the insurance  
7 policy.

8 (4) "Landfill" means a disposal area that is a sanitary  
9 landfill.

10 (5) "Letter of credit" means an irrevocable letter of credit  
11 that complies with 40 CFR 258.74(c).

12 (6) "LIME KILN DUST" MEANS PARTICULATE MATTER COLLECTED IN  
13 AIR EMISSION CONTROL DEVICES SERVING LIME KILNS.

14 (7) "LOW-HAZARD INDUSTRIAL WASTE" MEANS INDUSTRIAL MATERIAL  
15 THAT HAS A LOW POTENTIAL FOR GROUNDWATER CONTAMINATION WHEN  
16 MANAGED IN ACCORDANCE WITH THIS PART. THE FOLLOWING MATERIALS ARE  
17 LOW-HAZARD INDUSTRIAL WASTES:

18 (A) COAL ASH OR WOOD ASH.

19 (B) CEMENT KILN DUST.

20 (C) PULP AND PAPER MILL MATERIAL.

21 (D) SCRAP WOOD.

22 (E) SLUDGE FROM THE TREATMENT AND CONDITIONING OF WATER FOR  
23 DOMESTIC USE.

24 (F) RESIDUE FROM THE THERMAL TREATMENT OF PETROLEUM  
25 CONTAMINATED SOIL, MEDIA, OR DEBRIS.

26 (G) SLUDGE FROM THE TREATMENT AND CONDITIONING OF WATER FROM  
27 A COMMUNITY WATER SUPPLY.

- 1 (H) FOUNDRY SAND.
- 2 (I) MIXED WOOD ASH, SCRAP WOOD ASH, PULP AND PAPER MILL ASH.
- 3 (J) STREET CLEANINGS.
- 4 (K) ASPHALT SHINGLES.
- 5 (L) NEW CONSTRUCTION OR PRODUCTION SCRAP DRYWALL.
- 6 (M) CHIPPED OR SHREDDED TIRES.
- 7 (N) COPPER SLAG.
- 8 (O) COPPER STAMP SANDS.
- 9 (P) DREDGE MATERIAL FROM NONREMEDIAL ACTIVITIES.
- 10 (Q) FLUE GAS DESULFURIZATION MATERIAL.
- 11 (R) DEWATERED GRINDING SLURRY GENERATED FROM PUBLIC
- 12 TRANSPORTATION AGENCY ROAD PROJECTS.
- 13 (S) ANY MATERIAL DETERMINED BY THE DEPARTMENT UNDER SECTION
- 14 11553(7) TO BE A LOW-HAZARD INDUSTRIAL WASTE.
- 15 (8) ~~(6)~~—"Medical waste" means that term as it is defined in
- 16 section 13805 of the public health code, 1978 PA 368, MCL
- 17 333.13805.
- 18 (9) "MIXED WOOD ASH" MEANS THE MATERIAL RECOVERED FROM AIR
- 19 POLLUTION CONTROL SYSTEMS FOR, OR THE NONCOMBUSTED RESIDUE
- 20 REMAINING AFTER, THE COMBUSTION OF ANY COMBINATION OF WOOD, SCRAP
- 21 WOOD, RAILROAD TIES, OR TIRES, IF RAILROAD TIES COMPOSED LESS
- 22 THAN 35% BY WEIGHT OF THE TOTAL COMBUSTED MATERIAL AND TIRES
- 23 COMPOSED LESS THAN 10% BY WEIGHT OF THE TOTAL COMBUSTED MATERIAL.
- 24 (10) ~~(7)~~—"Municipal solid waste incinerator" means an
- 25 incinerator that is owned or operated by any person, and meets
- 26 all of the following requirements:
- 27 (a) The incinerator receives solid waste from off site and

1 burns only household waste from single and multiple dwellings,  
2 hotels, motels, and other residential sources, or this household  
3 waste together with solid waste from commercial, institutional,  
4 municipal, county, or industrial sources that, if disposed of,  
5 would not be required to be placed in a disposal facility  
6 licensed under part 111.

7 (b) The incinerator has established contractual requirements  
8 or other notification or inspection procedures sufficient to  
9 ensure that the incinerator receives and burns only waste  
10 referred to in subdivision (a).

11 (c) The incinerator meets the requirements of this part and  
12 the rules promulgated under this part.

13 (d) The incinerator is not an industrial furnace as defined  
14 in 40 CFR 260.10.

15 (e) The incinerator is not an incinerator that receives and  
16 burns only medical waste or only waste produced at 1 or more  
17 hospitals.

18 (11) ~~(8)~~—"Municipal solid waste incinerator ash" means the  
19 substances remaining after combustion in a municipal solid waste  
20 incinerator.

21 (12) "NONRESIDENTIAL PROPERTY" MEANS PROPERTY NOT USED OR  
22 INTENDED TO BE USED FOR ANY OF THE FOLLOWING:

23 (A) A CHILD DAY CARE CENTER.

24 (B) AN ELEMENTARY SCHOOL.

25 (C) AN ELDER CARE AND ASSISTED LIVING CENTER.

26 (D) A NURSING HOME.

27 (E) A SINGLE-FAMILY OR MULTIFAMILY DWELLING UNLESS THE

1 DWELLING IS PART OF A MIXED USE DEVELOPMENT AND ALL DWELLING  
2 UNITS AND ASSOCIATED OUTDOOR RESIDENTIAL USE AREAS ARE LOCATED  
3 ABOVE THE GROUND FLOOR.

4 (13) ~~(9)~~—"Perpetual care fund" means a trust or escrow  
5 account or perpetual care fund bond provided for in section  
6 11525.

7 (14) ~~(10)~~—"Perpetual care fund bond" means a surety bond, an  
8 irrevocable letter of credit, or a combination of these  
9 instruments in favor of and on a form approved by the department  
10 by which a perpetual care fund is established.

11 ~~——(11) "Trust fund" means a trust fund held by a trustee which~~  
12 ~~has the authority to act as a trustee and whose trust operations~~  
13 ~~are regulated and examined by a federal or state agency. A trust~~  
14 ~~fund shall comply with section 11523b.~~

15 (15) "PULP AND PAPER MILL ASH" MEANS THE MATERIAL RECOVERED  
16 FROM AIR POLLUTION CONTROL SYSTEMS FOR, OR THE NONCOMBUSTED  
17 RESIDUE REMAINING AFTER, THE COMBUSTION OF ANY COMBINATION OF  
18 COAL, WOOD, PULP AND PAPER MILL MATERIAL, WOOD OR BIOMASS FUEL  
19 PELLETS, SCRAP WOOD, RAILROAD TIES, OR TIRES, FROM A BOILER,  
20 POWER PLANT, OR FURNACE AT A PULP AND PAPER MILL, IF RAILROAD  
21 TIES COMPOSED LESS THAN 35% BY WEIGHT OF THE TOTAL COMBUSTED  
22 MATERIAL AND TIRES COMPOSED LESS THAN 10% BY WEIGHT OF THE TOTAL  
23 COMBUSTED MATERIAL.

24 (16) "PULP AND PAPER MILL MATERIAL" MEANS ALL OF THE  
25 FOLLOWING MATERIALS IF GENERATED AT A FACILITY THAT PRODUCES PULP  
26 OR PAPER:

27 (A) WASTEWATER TREATMENT SLUDGE, INCLUDING WOOD FIBERS,

1 MINERALS, AND MICROBIAL BIOMASS.

2 (B) REJECTS FROM SCREENS, CLEANERS, AND MILLS.

3 (C) BARK, WOOD FIBER, AND CHIPS.

4 (D) SCRAP PAPER.

5 (E) CAUSTICIZING RESIDUES, INCLUDING LIME MUD AND GRIT AND  
6 GREEN LIQUOR DREGS.

7 (F) ANY MATERIAL THAT THE DEPARTMENT DETERMINES HAS  
8 CHARACTERISTICS THAT ARE SIMILAR TO ANY OF THE MATERIALS LISTED  
9 IN SUBDIVISIONS (A) TO (E).

10 Sec. 11505. (1) "Recyclable materials" means source  
11 separated materials, site separated materials, high grade paper,  
12 glass, metal, plastic, aluminum, newspaper, corrugated paper,  
13 yard clippings, and other materials that may be recycled or  
14 composted.

15 (2) "Regional solid waste management planning agency" means  
16 the regional solid waste planning agency designated by the  
17 governor pursuant to 42 USC 6946.

18 (3) "Resource recovery facility" means machinery, equipment,  
19 structures, or any parts or accessories of machinery, equipment,  
20 or structures, installed or acquired for the primary purpose of  
21 recovering materials or energy from the waste stream.

22 (4) "Response activity" means an activity that is necessary  
23 to protect the public health, safety, welfare, or the  
24 environment, and includes, but is not limited to, evaluation,  
25 cleanup, removal, containment, isolation, treatment, monitoring,  
26 maintenance, replacement of water supplies, and temporary  
27 relocation of people.

1 (5) "Rubbish" means nonputrescible solid waste, excluding  
2 ashes, consisting of both combustible and noncombustible waste,  
3 including paper, cardboard, metal containers, yard clippings,  
4 wood, glass, bedding, crockery, demolished building materials, or  
5 litter of any kind that may be a detriment to the public health  
6 and safety.

7 (6) "Salvaging" means the lawful and controlled removal of  
8 reusable materials from solid waste.

9 (7) "Sharps" means that term as defined in section 13807 of  
10 the public health code, 1978 PA 368, MCL 333.13807.

11 (8) **"SCRAP WOOD" MEANS WOOD OR WOOD PRODUCT THAT IS 1 OR**  
12 **MORE OF THE FOLLOWING:**

13 (A) **PLYWOOD, PARTICLE BOARD, PRESSED BOARD, ORIENTED STRAND**  
14 **BOARD, FIBERBOARD, RESONATED WOOD, OR ANY OTHER WOOD OR WOOD**  
15 **PRODUCT MIXED WITH GLUE, RESINS, OR FILLER.**

16 (B) **WOOD OR WOOD PRODUCT TREATED WITH CREOSOTE OR**  
17 **PENTACHLOROPHENOL.**

18 (C) **ANY WOOD OR WOOD PRODUCT DESIGNATED AS SCRAP WOOD IN**  
19 **RULES PROMULGATED BY THE DEPARTMENT.**

20 (9) ~~(8)~~ "Site separated material" means glass, metal, wood,  
21 paper products, plastics, rubber, textiles, garbage, or any other  
22 material approved by the department that is separated from solid  
23 waste for the purpose of **RECYCLING OR** conversion into raw  
24 materials or new products. ~~Site separated material does not~~  
25 ~~include the residue remaining after glass, metal, wood, paper~~  
26 ~~products, plastics, rubber, textiles, or any other material~~  
27 ~~approved by the department is separated from solid waste.~~

1           (10) ~~(9)~~—"Slag" means the nonmetallic product resulting from  
2 melting or smelting operations for iron or steel.

3           Sec. 11506. (1) "Solid waste" means garbage, rubbish, ashes,  
4 incinerator ash, incinerator residue, street cleanings, municipal  
5 and industrial sludges, solid commercial ~~and WASTE~~, solid  
6 industrial waste, and animal waste. However, solid waste does not  
7 include the following:

8           (a) Human body waste.

9           (b) Medical waste.

10          (c) Organic waste generated in the production of livestock  
11 and poultry.

12          (d) Liquid waste.

13          (e) Ferrous or nonferrous scrap directed to a scrap metal  
14 processor or to a reuser of ferrous or nonferrous products.

15          (f) Slag or slag products directed to a slag processor or to  
16 a reuser of slag or slag products.

17          (g) Sludges and ashes managed as recycled or nondetrimental  
18 materials appropriate for agricultural or silvicultural use  
19 pursuant to a plan approved by the department.

20          **(H) THE FOLLOWING MATERIALS THAT ARE USED AS ANIMAL FEED, OR**  
21 **ARE APPLIED ON, OR ARE COMPOSTED AND APPLIED ON, FARMLAND OR**  
22 **FORESTLAND FOR AN AGRICULTURAL OR SILVICULTURAL PURPOSE AT AN**  
23 **AGRONOMIC RATE CONSISTENT WITH GAAMPS:**

24          (i) Food processing residuals ~~, AND~~ garbage. ~~, precipitated~~

25          (ii) **PRECIPITATED** calcium carbonate from sugar beet  
26 processing. ~~, weed~~

27          (iii) **WOOD** ashes resulting solely from a source that burns

1 only wood that is untreated and inert.  ~~,lime~~

2 (iv) **LIME** from kraft pulping processes generated prior to  
3 bleaching.  ~~,or aquatic~~

4 (v) **AQUATIC** plants.  ~~may be applied on, or composted and~~  
5  ~~applied on, farmland or forestland for an agricultural or~~  
6  ~~silvicultural purpose, or used as animal feed, as appropriate,~~  
7  ~~and such an application or use does not require a plan described~~  
8  ~~in this subdivision or a permit or license under this part. In~~  
9  ~~addition, source separated materials approved by the department~~  
10  ~~for land application for agricultural and silvicultural purposes~~  
11  ~~and compost produced from those materials may be applied to the~~  
12  ~~land for agricultural and silvicultural purposes and that~~  
13  ~~application does not require a plan described in this subdivision~~  
14  ~~or permit or license under this part. Land application authorized~~  
15  ~~under this subdivision for an agricultural or silvicultural~~  
16  ~~purpose, or use as animal feed as provided for in this~~  
17  ~~subdivision shall be performed in a manner that prevents losses~~  
18  ~~from runoff and leaching. Land application under this subdivision~~  
19  ~~shall be at an agronomic rate consistent with generally accepted~~  
20  ~~agricultural and management practices under the Michigan right to~~  
21  ~~farm act, 1981 PA 93, MCL 286.471 to 286.474.~~

22 (I) ~~(h)~~ Materials approved for emergency disposal by the  
23 department.

24 (J) ~~(i)~~ Source separated materials.

25 (K) ~~(j)~~ Site separated material.

26 (L) ~~(k)~~ Fly ash or any other ash produced from the combustion  
27 of coal, **COAL ASH**, when used in **UNDER ANY OF** the following

1 ~~instances.~~**CIRCUMSTANCES:**

2       (i) ~~With a maximum of 6% of unburned carbon, if used as AS a~~  
3 component of concrete, grout, mortar, or casting molds, **IF THE**  
4 **COAL ASH DOES NOT HAVE MORE THAN 6% UNBURNED CARBON.**

5       (ii) ~~With a maximum of 12% unburned carbon passing M.D.O.T.~~  
6 ~~test method MTM 101, if used as AS a raw material in asphalt for~~  
7 road construction, **IF THE COAL ASH DOES NOT HAVE MORE THAN 12%**  
8 **UNBURNED CARBON AND PASSES MICHIGAN TEST METHOD FOR WATER ASPHALT**  
9 **PREFERENTIAL TEST, MTM 101, AS SET FORTH IN THE STATE**  
10 **TRANSPORTATION DEPARTMENT'S MANUAL FOR THE MICHIGAN TEST METHODS**  
11 **(MTM).**

12       (iii) As aggregate, road material, or building material that  
13 in ultimate use **IS OR** will be stabilized or bonded by cement,  
14 limes, or asphalt, **OR ITSELF ACT AS A BONDING AGENT. TO BE**  
15 **CONSIDERED TO ACT AS A BONDING AGENT, THE COAL ASH MUST HAVE AT**  
16 **LEAST 10% AVAILABLE LIME.**

17       (iv) As a road base or construction fill that is **PLACED AT**  
18 **LEAST 4 FEET ABOVE THE SEASONAL GROUNDWATER TABLE AND** covered  
19 with asphalt, concrete, or other material approved by the  
20 department. ~~and that is placed at least 4 feet above the seasonal~~  
21 ~~groundwater table.~~

22 ~~—— (v) As the sole material in a depository designed to~~  
23 ~~reclaim, develop, or otherwise enhance land, subject to the~~  
24 ~~approval of the department. In evaluating the site, the~~  
25 ~~department shall consider the physical and chemical properties of~~  
26 ~~the ash, including, but not limited to, leachability, and the~~  
27 ~~engineering of the depository, including, but not limited to, the~~

1 ~~compaction, control of surface water and groundwater that may~~  
 2 ~~threaten to infiltrate the site, and evidence that the depository~~  
 3 ~~is designed to prevent water percolation through the material.~~

4 (M) **INERT MATERIAL.**

5 (N) ~~(l)~~—Soil that is washed or otherwise removed from sugar  
 6 beets, has not more than 35% moisture content, and is registered  
 7 as a soil conditioner under part 85. Any testing required to  
 8 become registered under part 85 is the responsibility of the  
 9 generator.

10 (O) ~~(m)~~—Soil that is relocated under section 20120c.

11 (P) ~~(n)~~—Diverted waste that is managed through a waste  
 12 diversion center.

13 (Q) **BENEFICIAL USE BY-PRODUCTS.**

14 (R) **COAL BOTTOM ASH, IF SUBSTANTIALLY FREE OF FLY ASH OR**  
 15 **ECONOMIZER ASH, WHEN USED AS COLD WEATHER ROAD ABRASIVE.**

16 (S) **STAMP SANDS WHEN USED AS COLD WEATHER ROAD ABRASIVE IN**  
 17 **THE UPPER PENINSULA BY ANY OF THE FOLLOWING:**

18 (i) **A PUBLIC ROAD AGENCY.**

19 (ii) **ANY OTHER PERSON PURSUANT TO A PLAN APPROVED BY A PUBLIC**  
 20 **ROAD AGENCY.**

21 (T) **ANY MATERIAL THAT IS RECLAIMED OR REUSED IN THE PROCESS**  
 22 **THAT GENERATED IT.**

23 (U) **ANY SECONDARY MATERIAL THAT, AS SPECIFIED IN OR**  
 24 **DETERMINED PURSUANT TO 40 CFR PART 241, IS NOT A SOLID WASTE WHEN**  
 25 **COMBUSTED.**

26 (V) ~~(o)~~—Other wastes regulated by statute.

27 (2) "Solid waste hauler" means a person who owns or operates

1 a solid waste transporting unit.

2 (3) "Solid waste processing plant" means a tract of land,  
3 building, unit, or appurtenance of a building or unit or a  
4 combination of land, buildings, and units that is used or  
5 intended for use for the processing of solid waste or the  
6 separation of material for salvage or disposal, or both, but does  
7 not include a plant engaged primarily in the acquisition,  
8 processing, and shipment of ferrous or nonferrous metal scrap, or  
9 a plant engaged primarily in the acquisition, processing, and  
10 shipment of slag or slag products.

11 (4) "Solid waste transporting unit" means a container, which  
12 may be an integral part of a truck or other piece of equipment  
13 used for the transportation of solid waste.

14 (5) "Solid waste transfer facility" means a tract of land, a  
15 building and any appurtenances, or a container, or any  
16 combination of land, buildings, or containers that is used or  
17 intended for use in the rehandling or storage of solid waste  
18 incidental to the transportation of the solid waste, but is not  
19 located at the site of generation or the site of disposal of the  
20 solid waste.

21 (6) "Source separated material" means ~~glass,~~ **ANY OF THE**  
22 **FOLLOWING MATERIALS IF SEPARATED AT THE SOURCE OF GENERATION AND**  
23 **NOT SPECULATIVELY ACCUMULATED:**

24 (A) **GLASS**, metal, wood, paper products, plastics, rubber,  
25 textiles, garbage, or any other material approved by the  
26 department that is ~~separated at the source of generation for the~~  
27 ~~purpose of~~ **USED FOR** conversion into raw materials or new

1 products. ~~including, but~~ FOR THE PURPOSES OF THIS SUBDIVISION,  
2 RAW MATERIALS OR NEW PRODUCTS INCLUDE, BUT ARE not limited to,  
3 compost, biogas from anaerobic digestion, ~~or~~ synthetic gas from  
4 gasification or pyrolysis, OR OTHER FUEL. THIS SUBDIVISION DOES  
5 NOT PREVENT MATERIAL FROM BEING CLASSIFIED AS A RENEWABLE ENERGY  
6 RESOURCE AS DEFINED IN SECTION 11 OF THE CLEAN, RENEWABLE, AND  
7 EFFICIENT ENERGY ACT, 2008 PA 295, MCL 460.1011.

8 (B) SCRAP WOOD AND RAILROAD TIES USED TO FUEL AN INDUSTRIAL  
9 BOILER, KILN, POWER PLANT, OR FURNACE, SUBJECT TO PART 55, FOR  
10 PRODUCTION OF NEW WOOD PRODUCTS, OR FOR OTHER USES APPROVED BY  
11 THE DEPARTMENT.

12 (C) CHIPPED OR WHOLE TIRES USED TO FUEL AN INDUSTRIAL  
13 BOILER, KILN, POWER PLANT, OR FURNACE, SUBJECT TO PART 55, OR FOR  
14 OTHER USES APPROVED BY THE DEPARTMENT. THIS SUBDIVISION DOES NOT  
15 PREVENT MATERIAL FROM BEING CLASSIFIED AS A RENEWABLE ENERGY  
16 RESOURCE AS DEFINED IN SECTION 11 OF THE CLEAN, RENEWABLE, AND  
17 EFFICIENT ENERGY ACT, 2008 PA 295, MCL 460.1011.

18 (D) RECOVERED PAINT SOLIDS USED TO FUEL AN INDUSTRIAL  
19 BOILER, KILN, POWER PLANT, OR FURNACE, SUBJECT TO PART 55, OR FOR  
20 OTHER USES APPROVED BY THE DEPARTMENT.

21 (E) GYPSUM DRYWALL GENERATED FROM THE PRODUCTION OF  
22 WALLBOARD USED FOR STOCK RETURNED TO THE PRODUCTION PROCESS OR  
23 FOR OTHER USES APPROVED BY THE DEPARTMENT.

24 (F) FLUE GAS DESULFURIZATION GYPSUM USED FOR PRODUCTION OF  
25 CEMENT OR WALLBOARD OR OTHER USES APPROVED BY THE DEPARTMENT.

26 (G) ASPHALT SHINGLES THAT DO NOT CONTAIN ASBESTOS, ROLLED  
27 ROOFING, OR TAR PAPER USED AS A COMPONENT IN ASPHALT OR USED TO

1 FUEL AN INDUSTRIAL BOILER, KILN, POWER PLANT, OR FURNACE, SUBJECT  
2 TO PART 55, OR FOR OTHER USES APPROVED BY THE DEPARTMENT.

3 (H) MUNICIPAL SOLID WASTE INCINERATOR ASH THAT MEETS  
4 CRITERIA SPECIFIED BY THE DEPARTMENT AND THAT IS USED AS DAILY  
5 COVER AT A DISPOSAL FACILITY LICENSED PURSUANT TO THIS PART.

6 (I) UTILITY POLES OR POLE SEGMENTS REUSED AS POLES, POSTS,  
7 OR SIMILAR USES APPROVED BY THE DEPARTMENT IN WRITING.

8 (J) RAILROAD TIES REUSED IN LANDSCAPING, EMBANKMENTS, OR  
9 SIMILAR USES APPROVED BY THE DEPARTMENT IN WRITING.

10 (K) ANY MATERIALS AND USES APPROVED BY THE DEPARTMENT UNDER  
11 SECTION 11553(8).

12 (L) ANY MATERIAL DETERMINED BY THE DEPARTMENT IN WRITING  
13 PRIOR TO THE EFFECTIVE DATE OF THE 2014 AMENDATORY ACT THAT ADDED  
14 THIS SUBDIVISION TO BE A SOURCE SEPARATED MATERIAL.

15 (7) "STAMP SANDS" MEANS FINELY GRAINED CRUSHED ROCK  
16 RESULTING FROM MINING, MILLING, OR SMELTING OF COPPER ORE AND  
17 INCLUDES NATIVE SUBSTANCES CONTAINED WITHIN THE CRUSHED ROCK AND  
18 ANY ANCILLARY MATERIAL ASSOCIATED WITH THE CRUSHED ROCK.

19 (8) "TREATED WOOD" MEANS WOOD OR WOOD PRODUCT THAT HAS BEEN  
20 TREATED WITH 1 OR MORE OF THE FOLLOWING:

21 (A) CHROMATED COPPER ARSENATE (CCA).

22 (B) AMMONIACAL COPPER QUAT (ACQ).

23 (C) AMMONIACAL COPPER ZINC ARSENATE (ACZA).

24 (D) ANY OTHER CHEMICAL DESIGNATED IN RULES PROMULGATED BY  
25 THE DEPARTMENT.

26 (9) "TRUST FUND" MEANS A FUND HELD BY A TRUSTEE WHO HAS THE  
27 AUTHORITY TO ACT AS A TRUSTEE AND WHOSE TRUST OPERATIONS ARE

1 **REGULATED AND EXAMINED BY A FEDERAL OR STATE AGENCY.**

2 (10) ~~(7)~~—"Type I public water supply", "type IIa public  
3 water supply", "type IIb public water supply", and "type III  
4 public water supply" mean those terms, respectively, as described  
5 in R 325.10502 of the Michigan administrative code.

6 (11) ~~(8)~~—"Waste diversion center" means property or a  
7 building, or a portion of property or a building, designated for  
8 the purpose of receiving or collecting diverted wastes and not  
9 used for residential purposes.

10 (12) **"WOOD" MEANS TREES, BRANCHES AND ASSOCIATED LEAVES,  
11 BARK, LUMBER, PALLETS, WOOD CHIPS, SAWDUST, OR OTHER WOOD OR WOOD  
12 PRODUCT BUT DOES NOT INCLUDE SCRAP WOOD, TREATED WOOD, PAINTED  
13 WOOD OR PAINTED WOOD PRODUCT, OR ANY WOOD OR WOOD PRODUCT THAT  
14 HAS BEEN CONTAMINATED DURING MANUFACTURE OR USE.**

15 (13) **"WOOD ASH" MEANS ANY TYPE OF ASH OR SLAG RESULTING FROM  
16 THE BURNING OF WOOD.**

17 (14) ~~(9)~~—"Yard clippings" means leaves, grass clippings,  
18 vegetable or other garden debris, shrubbery, or brush or tree  
19 trimmings, less than 4 feet in length and 2 inches in diameter,  
20 that can be converted to compost humus. Yard clippings ~~does~~**DO**  
21 not include stumps, agricultural wastes, animal waste, roots,  
22 sewage sludge, or garbage.

23 Sec. 11542. (1) Except as provided in subsection (5) **AND**  
24 **EXCEPT FOR MUNICIPAL SOLID WASTE INCINERATOR ASH THAT IS**  
25 **DESCRIBED AND USED AS PROVIDED IN SECTION 11506(6)(H)**, municipal  
26 solid waste incinerator ash shall be disposed of in 1 of the  
27 following:

1 (a) A landfill that meets all of the following requirements:

2 (i) The landfill is in compliance with this part and the  
3 rules promulgated under this part.

4 (ii) The landfill is used exclusively for the disposal of  
5 municipal solid waste incinerator ash.

6 (iii) The landfill design includes all of the following in  
7 descending order according to their placement in the landfill:

8 (A) A leachate collection system.

9 (B) A synthetic liner at least 60 mils thick.

10 (C) A compacted clay liner of 5 feet or more with a maximum  
11 hydraulic conductivity of  $1 \times 10^{-7}$  centimeters per second.

12 (D) A leak detection and leachate collection system.

13 (E) A compacted clay liner at least 3 feet thick with a  
14 maximum hydraulic conductivity of  $1 \times 10^{-7}$  centimeters per second  
15 or a synthetic liner at least 40 mils thick.

16 (b) A landfill that meets all of the following requirements:

17 (i) The landfill is in compliance with this part and the  
18 rules promulgated under this part.

19 (ii) The landfill is used exclusively for the disposal of  
20 municipal solid waste incinerator ash.

21 (iii) The landfill design includes all of the following in  
22 descending order according to their placement in the landfill:

23 (A) A leachate collection system.

24 (B) A composite liner, as defined in R 299.4102 of the  
25 Michigan administrative code.

26 (C) A leak detection and leachate collection system.

27 (D) A second composite liner.

1           (iv) If contaminants that may threaten the public health,  
2 safety, or welfare, or the environment are found in the leachate  
3 collection system described in subparagraph (iii) (C), the owner or  
4 operator of the landfill shall determine the source and nature of  
5 the contaminants and make repairs, to the extent practicable,  
6 that will prevent the contaminants from entering the leachate  
7 collection system. If the department determines that the source  
8 of the contaminants is caused by a design failure of the  
9 landfill, the department, notwithstanding an approved  
10 construction permit or operating license, may require landfill  
11 cells at that landfill that will be used for the disposal of  
12 municipal solid waste incinerator ash, which are under  
13 construction or will be constructed in the future at the  
14 landfill, to be constructed in conformance with improved design  
15 standards approved by the department. However, this subparagraph  
16 does not require the removal of liners or leak detection and  
17 leachate collection systems that are already in place in a  
18 landfill cell under construction.

19           (c) A landfill that is a monitorable unit, as defined in R  
20 299.4104 of the Michigan administrative code, and that meets all  
21 of the following requirements:

22           (i) The landfill is in compliance with this part and the  
23 rules promulgated under this part.

24           (ii) The landfill is used exclusively for the disposal of  
25 municipal solid waste incinerator ash.

26           (iii) The landfill design includes all of the following in  
27 descending order according to their placement in the landfill:

1 (A) A leachate collection system.

2 (B) A synthetic liner at least 60 mils thick.

3 (C) Immediately below the synthetic liner, either 2 feet of  
4 compacted clay with a maximum hydraulic conductivity of  $1 \times 10^{-7}$   
5 centimeters per second or a bentonite geocomposite liner, as  
6 specified in R 299.4914 of the Michigan administrative code.

7 (D) At least 10 feet of either natural or compacted clay  
8 with a maximum hydraulic conductivity of  $1 \times 10^{-7}$  centimeters per  
9 second, or equivalent.

10 (d) A landfill with a design approved by the department that  
11 will prevent the migration of any hazardous constituent into the  
12 groundwater or surface water at least as effectively as the  
13 design requirements of subdivisions (a) to (c).

14 (e) A type II landfill, as ~~defined~~ **DESCRIBED** in R 299.4105  
15 of the Michigan administrative code, if both of the following  
16 conditions apply:

17 (i) The ash was generated by a municipal solid waste  
18 incinerator that is designed to burn at a temperature in excess  
19 of 2500 degrees Fahrenheit.

20 (ii) The ash from any individual municipal solid waste  
21 incinerator is disposed of pursuant to this subdivision for a  
22 period not to exceed 60 days.

23 (2) Except as provided in subsection (3), a landfill that is  
24 constructed pursuant to the design described in subsection (1)  
25 shall be capped following its closure by all of the following in  
26 descending order:

27 (a) Six inches of top soil with a vegetative cover.

1 (b) Two feet of soil to protect against animal burrowing,  
2 temperature, erosion, and rooted vegetation.

3 (c) An infiltration collection system.

4 (d) A synthetic liner at least 30 mils thick.

5 (e) Two feet of compacted clay with a maximum hydraulic  
6 conductivity of  $1 \times 10^{-7}$  centimeters per second.

7 (3) A landfill that receives municipal solid waste  
8 incinerator ash under this section may be capped with a design  
9 approved by the department that will prevent the migration of any  
10 hazardous constituent into the groundwater or surface water at  
11 least as effectively as the design requirements of subsection  
12 (2).

13 (4) If leachate is collected from a landfill under this  
14 section, the leachate shall be monitored and tested in accordance  
15 with this part and the rules promulgated under this part.

16 (5) As an alternative to disposal described in subsection  
17 (1), the owner or operator of a municipal solid waste incinerator  
18 may process municipal solid waste incinerator ash through  
19 mechanical or chemical methods, or both, to substantially  
20 diminish the toxicity of the ash or its constituents or limit the  
21 leachability of the ash or its constituents to minimize threats  
22 to human health and the environment, if processing is performed  
23 on the site of the municipal solid waste incinerator or at the  
24 site of a landfill described in subsection (1), if the process  
25 has been approved by the department as provided by rule, and if  
26 the ash is tested after processing in accordance with a protocol  
27 approved by the department as provided by rule. The department

1 shall approve the process and testing protocol under this  
2 subsection only if the process and testing protocol will protect  
3 human health and the environment. In making this determination,  
4 the department shall consider all potential pathways of human and  
5 environmental exposure, including both short-term and long-term,  
6 to constituents of the ash that may be released during the reuse  
7 or recycling of the ash. The department shall consider requiring  
8 methods to determine the leaching, total chemical analysis,  
9 respirability, and toxicity of reused or recycled ash. A leaching  
10 procedure shall include testing under both acidic and native  
11 conditions. If municipal solid waste incinerator ash is processed  
12 in accordance with the requirements of this subsection and the  
13 processed ash satisfies the testing protocol approved by the  
14 department as provided by rule, the ash may be disposed of in a  
15 municipal solid waste landfill, as defined by R 299.4104 of the  
16 Michigan administrative code, licensed under this part or may be  
17 used in any manner approved by the department. If municipal solid  
18 waste incinerator ash is processed as provided in this  
19 subsection, but does not satisfy the testing protocol approved by  
20 the department as provided by rule, the ash shall be disposed of  
21 in accordance with subsection (1).

22 (6) The disposal of municipal solid waste incinerator ash  
23 within a landfill that is in compliance with subsection (1) does  
24 not constitute a new proposal for which a new construction permit  
25 is required under section ~~11510~~, **11509**, if a construction permit  
26 has previously been issued under section 11509 for the landfill  
27 and the owner or operator of the landfill submits 6 copies of an

1 operating license amendment application to the department for  
2 approval pursuant to part 13. The operating license amendment  
3 application shall include revised plans and specifications for  
4 all facility modifications including a leachate disposal plan, an  
5 erosion control plan, and a dust control plan which shall be part  
6 of the operating license amendment. The dust control plan shall  
7 contain sufficient detail to ensure that dust emissions are  
8 controlled by available control technologies that reduce dust  
9 emissions by a reasonably achievable amount to the extent  
10 necessary to protect human health and the environment. The dust  
11 control plan shall provide for the ash to be wet during all times  
12 that the ash is exposed to the atmosphere at the landfill or  
13 otherwise to be covered by daily cover material; for dust  
14 emissions to be controlled during dumping, grading, loading, and  
15 bulk transporting of the ash at the landfill; and for dust  
16 emissions from access roads within the landfill to be controlled.  
17 With the exception of a landfill that is in existence on June 12,  
18 1989 that the department determines is otherwise in compliance  
19 with this section, the owner or operator of the landfill shall  
20 obtain the operating license amendment prior to initiating  
21 construction. Prior to operation, the owner or operator of a  
22 landfill shall submit to the department certification from a  
23 licensed professional engineer that the landfill has been  
24 constructed in accordance with the approved plan and  
25 specifications. ~~At the time~~ **WHEN** the copies are submitted to the  
26 department, the owner or operator of the landfill shall send a  
27 copy of the operating license amendment application to the

1 municipality where the landfill is located. At least 30 days  
2 prior to making a final decision on the operating license  
3 amendment, the department shall hold at least 1 public meeting in  
4 the vicinity of the landfill to receive public comments. Prior to  
5 a public meeting, the department shall publish notice of the  
6 meeting in a newspaper serving the local area.

7 (7) The owner or operator of a municipal solid waste  
8 incinerator or a disposal area that receives municipal solid  
9 waste incinerator ash shall allow the department access to the  
10 facility for the purpose of supervising the collection of samples  
11 or obtaining samples of ash to test or to monitor air quality at  
12 the facility.

13 (8) As used in subsection (1), "landfill" means a landfill  
14 or a specific portion of a landfill.

15 **SEC. 11551. (1) EXCEPT FOR A MATERIAL THAT THE DEPARTMENT**  
16 **APPROVES AS A BENEFICIAL USE BY-PRODUCT UNDER SECTION 11553(3) OR**  
17 **(4), TO QUALIFY AS A BENEFICIAL USE BY-PRODUCT, A MATERIAL OR THE**  
18 **USE OF THE MATERIAL, AS APPLICABLE, SHALL MEET ALL OF THE**  
19 **FOLLOWING REQUIREMENTS:**

20 (A) THE MATERIAL IS NOT A PART 111 HAZARDOUS WASTE OR MIXED  
21 WITH A HAZARDOUS WASTE.

22 (B) THE MATERIAL IS NOT STORED AT THE SITE OF GENERATION OR  
23 USE FOR MORE THAN 3 YEARS, OR THE AMOUNT THAT IS TRANSFERRED OFF  
24 SITE FOR USE DURING A 3-YEAR PERIOD EQUALS AT LEAST 75% BY WEIGHT  
25 OR VOLUME OF THE AMOUNT OF THAT MATERIAL STORED ON SITE FOR  
26 BENEFICIAL USE AT THE BEGINNING OF THE 3-YEAR PERIOD.

27 (C) THE MATERIAL IS STORED IN A MANNER THAT MAINTAINS ITS

1 USEFULNESS, CONTROLS WIND DISPERSAL, AND PREVENTS LOSS OF THE  
 2 MATERIAL BEYOND THE STORAGE AREA.

3 (D) THE MATERIAL IS STORED IN A MANNER THAT DOES NOT CAUSE  
 4 GROUNDWATER TO NO LONGER BE FIT FOR 1 OR MORE PROTECTED USES,  
 5 DOES NOT CAUSE A VIOLATION OF A PART 31 SURFACE WATER QUALITY  
 6 STANDARD, AND OTHERWISE DOES NOT VIOLATE PART 31.

7 (E) THE MATERIAL IS TRANSPORTED IN A MANNER THAT PREVENTS  
 8 ACCIDENTAL LEAKAGE, SPILLAGE, OR WIND DISPERSAL.

9 (F) THE USE OF THE MATERIAL IS FOR A LEGITIMATE BENEFICIAL  
 10 PURPOSE OTHER THAN A MEANS TO DISCARD THE MATERIAL AND THE  
 11 MATERIAL IS USED ACCORDING TO GENERALLY ACCEPTED ENGINEERING,  
 12 INDUSTRIAL, OR COMMERCIAL STANDARDS FOR THAT USE.

13 (G) FOR BENEFICIAL USE 2, THE MATERIAL, IF SPECIFIED BELOW,  
 14 MEETS THE FOLLOWING ENVIRONMENTAL STANDARDS USING, AT THE OPTION  
 15 OF THE GENERATOR OF THE BY-PRODUCT, EPA METHOD 1311, 1312, OR  
 16 ASTM TEST METHOD 3987:

17	CONSTITUENT -	COAL	PULP	FOUNDRY	CEMENT	WATER	STAMP	SPENT
18	MAXIMUM	ASH	AND	SAND	KILN	SOFTENING	SAND	MEDIA
19	LEACHATE MG/L	OR	PAPER		DUST,	LIMES,		FROM
20		WOOD	MILL		LIME	DEWATERED		SAND
21		ASH	ASH,		KILN	GRINDING		BLASTING
22			MIXED		DUST	SLUDGE		
23			WOOD					
24			ASH					
25	ARSENIC - 0.2	X	X	X	X	X		
26	BORON - 10	X						
27	CADMIUM - 0.1	X	X		X	X		



1	MERCURY	15
2	NICKEL	374
3	SELENIUM	89
4	ZINC	2,492

5 (iii) IF THE DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT  
6 DETERMINES, BASED ON PEER-REVIEWED SCIENTIFIC LITERATURE, THAT  
7 ANY OTHER CONSTITUENT IS SUBJECT TO A CUMULATIVE LOADING  
8 REQUIREMENT, THE AMOUNT OF THAT CONSTITUENT APPLIED TO AN AREA OF  
9 LAND OVER ANY PERIOD OF TIME DOES NOT EXCEED THAT CUMULATIVE  
10 LOADING REQUIREMENT. THE CUMULATIVE LOAD FOR THAT CONSTITUENT  
11 SHALL BE CALCULATED AS FOLLOWS: CONSTITUENT CONCENTRATION (MG/KG  
12 DRY WEIGHT) X CONVERSION FACTOR OF 0.002 (CONCENTRATION TO POUNDS  
13 PER DRY TON) X THE MATERIAL APPLICATION RATE IN DRY TONS PER  
14 ACRE.

15 (I) FOR BENEFICIAL USE 5, THE MATERIAL IS FOUNDRY SAND FROM  
16 FERROUS OR ALUMINUM FOUNDRIES AND REPRESENTATIVE SAMPLING OF THE  
17 FOUNDRY SAND USING EITHER A TOTALS ANALYSIS, A LEACHATE ANALYSIS  
18 (USING EPA METHOD 1311, EPA METHOD 1312, ASTM METHOD 3987, OR  
19 OTHER LEACHING PROTOCOL APPROVED BY THE DEPARTMENT), OR ANY  
20 COMBINATION OF THE 2 TYPES OF ANALYSES DEMONSTRATES THAT NONE OF  
21 THE FOLLOWING MAXIMUM CONCENTRATIONS ARE EXCEEDED:

22	CONSTITUENT	TOTALS	LEACHATE
23		ANALYSIS MG/KG	ANALYSIS MG/L
24	ANTIMONY	4.3	0.006
25	COBALT	0.8	0.04
26	COPPER	5,800	1

1	IRON	23,185	2.0
2	LEAD	700	0.004
3	MANGANESE	1,299	0.86
4	MOLYBDENUM	5	0.073
5	NICKEL	100	0.1
6	THALLIUM	2.3	0.002
7	VANADIUM	72	0.0045
8	ZINC	2,400	2.4
9	BENZENE	0.1	0.005
10	FORMALDEHYDE	26	1.3
11	PHENOL	88	4.4
12	TRICHLOROETHYLENE	0.1	0.005

13           (2) THE DETERMINATION WHETHER A MATERIAL MEETS THE  
14 REQUIREMENTS OF SUBSECTION (1) (A) OR (G) SHALL BE BASED ON THE  
15 ANALYSIS OF A REPRESENTATIVE SAMPLE OF THE MATERIAL BY THE  
16 INITIAL GENERATOR. THE INITIAL GENERATOR SHALL MAINTAIN RECORDS  
17 OF THE TEST RESULTS FOR NOT LESS THAN 10 YEARS AFTER THE DATE THE  
18 MATERIAL WAS SENT OFF SITE AND MAKE THE RECORDS AVAILABLE TO THE  
19 DEPARTMENT UPON REQUEST. THE GENERATOR SHALL RESAMPLE AND ANALYZE  
20 THE MATERIAL WHEN RAW MATERIALS OR PROCESSES CHANGE IN A WAY THAT  
21 COULD REASONABLY BE EXPECTED TO MATERIALLY AFFECT ANALYSIS  
22 RESULTS.

23           (3) EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, STORAGE AND  
24 USE OF BENEFICIAL USE BY-PRODUCTS SHALL COMPLY WITH ALL OTHER  
25 APPLICABLE PROVISIONS OF THIS ACT.

26           (4) THE STORAGE OF A MATERIAL FOR BENEFICIAL USE 3 THAT  
27 COMPLIES WITH REGULATION NO. 641, COMMERCIAL FERTILIZER BULK

1 STORAGE, R 285.641.1 TO R 285.641.18 OF THE MICHIGAN  
2 ADMINISTRATIVE CODE, SHALL BE CONSIDERED TO COMPLY WITH THE  
3 STORAGE REQUIREMENTS OF THIS PART.

4 (5) A PERSON THAT ACTIVELY MANAGES AND REUSES A BENEFICIAL  
5 USE BY-PRODUCT THAT HAS ALREADY BEEN USED IN COMPLIANCE WITH THIS  
6 PART MAY RELY ON ANALYTICAL DATA FROM THE PRIOR USE.

7 (6) ALL OF THE FOLLOWING APPLY TO BENEFICIAL USES 1 AND 2 AT  
8 AND ALONG ROADWAYS:

9 (A) ROUTINE REPAIR AND REPLACEMENT OF ROADWAYS CONSTRUCTED  
10 USING BENEFICIAL USE MATERIALS DOES NOT CONSTITUTE GENERATION OF  
11 BENEFICIAL USE BY-PRODUCTS TRIGGERING THE REQUIREMENTS OF THIS  
12 SECTION IF THE BENEFICIAL USE BY-PRODUCTS REMAIN OR ARE REUSED AT  
13 THE SAME ROADWAY AND ARE USED IN A MANNER THAT MEETS THE  
14 DEFINITION OF BENEFICIAL USE 1 OR BENEFICIAL USE 2, AS  
15 APPROPRIATE. IF THE BENEFICIAL USE BY-PRODUCTS WILL BE REUSED AT  
16 SOME PLACE OTHER THAN THE SAME ROADWAY, THEN THE REQUIREMENTS  
17 APPLICABLE TO GENERATORS OF BENEFICIAL USE BY-PRODUCTS MUST BE  
18 MET, EXCEPT AS FOLLOWS:

19 (i) AS SET FORTH IN SUBSECTION (5).

20 (ii) THE REQUIREMENTS OF SECTION 11552 APPLY ONLY IF THE  
21 CATEGORY OF BENEFICIAL USE WILL CHANGE.

22 (B) FOR BENEFICIAL USE 2, THE REQUIREMENT THAT BENEFICIAL  
23 USE MATERIALS BE COVERED BY CONCRETE, ASPHALT, OR 6 INCHES OF  
24 GRAVEL APPLIES AT THE TIME OF PLACEMENT AND USE. THE DEVELOPMENT  
25 OF POTHoles, SHOULDER EROSION, OR SIMILAR DETERIORATION DOES NOT  
26 RESULT IN A VIOLATION OF THIS PART.

27 (C) IF ROAD MATERIALS CONTAINING BENEFICIAL USE BY-PRODUCTS

1 ARE GROUND, REHEATED, OR MELTED FOR REUSE, THE REQUIREMENTS OF  
2 PART 55 MUST BE MET.

3 (D) THIS PART DOES NOT PROHIBIT THE STATE TRANSPORTATION  
4 DEPARTMENT FROM SEEKING ADDITIONAL DATA OR INFORMATION FOR ROAD  
5 BUILDING MATERIALS OR FROM REQUIRING THAT ROAD BUILDING MATERIALS  
6 MEET STATE TRANSPORTATION DEPARTMENT SPECIFICATIONS AND  
7 STANDARDS.

8 (7) FOR BENEFICIAL USE 3, THE MATERIAL THAT IS OFFERED FOR  
9 SALE OR USE SHALL BE ANNUALLY REGISTERED OR LICENSED UNDER PART  
10 85 OR 1955 PA 162, MCL 290.531 TO 290.538. IN ADDITION TO THE  
11 INFORMATION REQUIRED UNDER PART 85 OR 1955 PA 162, MCL 290.531 TO  
12 290.538, THE FOLLOWING INFORMATION SHALL BE SUBMITTED TO THE  
13 DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT WITH THE LICENSE  
14 OR REGISTRATION APPLICATION:

15 (A) DIRECTIONS FOR USE TO ENSURE THAT THE MATERIAL IS  
16 APPLIED AT AN AGRONOMIC RATE THAT HAS BEEN REVIEWED BY A  
17 CERTIFIED CROP ADVISOR.

18 (B) A LABORATORY ANALYSIS REPORT THAT CONTAINS ALL OF THE  
19 FOLLOWING:

20 (i) SAMPLING RESULTS THAT DEMONSTRATE THAT THE MATERIAL DOES  
21 NOT POSE HARM TO HUMAN HEALTH OR THE ENVIRONMENT. ONE METHOD BY  
22 WHICH THIS DEMONSTRATION CAN BE MADE IS BY SAMPLING RESULTS THAT  
23 COMPLY WITH BOTH OF THE FOLLOWING:

24 (A) THE LEVELS ESTABLISHED PURSUANT TO THE ASSOCIATION OF  
25 AMERICAN PLANT FOOD CONTROL OFFICIALS' STATEMENT OF UNIFORM  
26 INTERPRETATION AND POLICY #25, AS FOLLOWS:

27 (I) A FERTILIZER WITH A PHOSPHORUS OR MICRONUTRIENT

1 GUARANTEE SHALL APPLY THE POLICY IN ITS ENTIRETY.

2 (II) A FERTILIZER WITH ONLY A NITROGEN, POTASSIUM, OR  
3 SECONDARY NUTRIENT GUARANTEE SHALL USE THE MICRONUTRIENTS COLUMN  
4 IN THE POLICY AND APPLY A MULTIPLIER OF 1 TO DETERMINE THE  
5 MAXIMUM ALLOWABLE CONCENTRATION OF EACH METAL.

6 (III) A SOIL CONDITIONER OR LIMING MATERIAL SHALL USE THE  
7 MICRONUTRIENTS COLUMN IN THE POLICY AND APPLY A MULTIPLIER OF 1  
8 TO DETERMINE THE MAXIMUM ALLOWABLE CONCENTRATION OF EACH METAL.

9 (B) THE PART 201 GENERIC RESIDENTIAL SOIL DIRECT CONTACT  
10 CLEANUP CRITERIA FOR VOLATILE ORGANIC COMPOUNDS (AS DETERMINED BY  
11 U.S. EPA METHOD 8260), SEMIVOLATILE ORGANIC COMPOUNDS (AS  
12 DETERMINED BY U.S. EPA METHOD 8270C), AND DIOXINS (AS DETERMINED  
13 BY U.S. EPA METHOD 1613B). RESULTS FOR DIOXINS SHALL BE REPORTED  
14 ON A DRY WEIGHT BASIS, AND TOTAL DIOXIN EQUIVALENCE SHALL BE  
15 CALCULATED AND REPORTED UTILIZING THE U.S. EPA TOXIC EQUIVALENCY  
16 FACTORS (U.S. EPA/100/R10/005).

17 (i) FOR A FERTILIZER, ALL OF THE FOLLOWING USED BY A  
18 CERTIFIED CROP ADVISOR TO DETERMINE AN AGRONOMIC RATE CONSISTENT  
19 WITH GENERALLY ACCEPTED AGRICULTURAL AND MANAGEMENT PRACTICES:

20 (A) A DEMONSTRATION THAT THE MATERIAL CONTAINS THE MINIMUM  
21 PERCENTAGE OF EACH PLANT NUTRIENT GUARANTEED OR CLAIMED TO BE  
22 PRESENT.

23 (B) THE PERCENTAGE OF DRY SOLIDS, NITROGEN, AMMONIUM  
24 NITROGEN, NITRATE NITROGEN, PHOSPHORUS, AND POTASSIUM IN THE  
25 MATERIAL.

26 (C) THE LEVELS OF CALCIUM, MAGNESIUM, ACIDITY OR BASICITY  
27 MEASURED BY PH, SULFUR, CHROMIUM, COPPER, SILVER, CHLORINE, AND

1 BORON.

2 (iii) FOR A SOIL CONDITIONER OR A LIMING MATERIAL, ALL OF THE  
3 FOLLOWING USED BY A CERTIFIED CROP ADVISOR TO DETERMINE AN  
4 AGRONOMIC RATE CONSISTENT WITH GENERALLY ACCEPTED AGRICULTURAL  
5 AND MANAGEMENT PRACTICES:

6 (A) THE PERCENTAGE OF DRY SOLIDS IN THE MATERIAL.

7 (B) THE LEVELS OF CALCIUM, MAGNESIUM, ACIDITY OR BASICITY  
8 MEASURED BY PH, SULFUR, CHROMIUM, COPPER, SILVER, CHLORINE, AND  
9 BORON.

10 (iv) FOR A SOIL CONDITIONER, SCIENTIFICALLY ACCEPTABLE DATA  
11 THAT GIVE REASONABLE ASSURANCE THAT THE MATERIAL WILL IMPROVE THE  
12 PHYSICAL NATURE OF THE SOIL BY ALTERING THE SOIL STRUCTURE BY  
13 MAKING SOIL NUTRIENTS MORE AVAILABLE OR OTHERWISE ENHANCING THE  
14 SOIL MEDIA RESULTING IN BENEFICIAL CROP RESPONSE OR OTHER PLANT  
15 GROWTH.

16 (v) FOR A LIMING MATERIAL, SCIENTIFICALLY ACCEPTABLE DATA  
17 DEMONSTRATING THAT THE MATERIAL WILL CORRECT SOIL ACIDITY.

18 (8) WHEN A MATERIAL IS LICENSED OR REGISTERED AS DESCRIBED  
19 IN SUBSECTION (7), THE LABORATORY ANALYSIS REPORT AND THE  
20 SCIENTIFICALLY ACCEPTABLE DATA SUBMITTED WITH A PRIOR APPLICATION  
21 MAY BE RESUBMITTED FOR A SUBSEQUENT APPLICATION UNLESS THE RAW  
22 MATERIALS OR PROCESSES USED TO GENERATE THE MATERIAL CHANGE IN A  
23 WAY THAT COULD REASONABLY BE EXPECTED TO MATERIALLY AFFECT THE  
24 LABORATORY ANALYSIS REPORT OR SCIENTIFICALLY ACCEPTABLE DATA.

25 (9) THIS PART DOES NOT AUTHORIZE OPEN DUMPING PROHIBITED BY  
26 THE SOLID WASTE DISPOSAL ACT, 42 USC 6901 TO 6992K.

27 (10) IF AN OWNER OF PROPERTY HAS KNOWLEDGE THAT A MATERIAL

1 HAS BEEN USED ON THE PROPERTY FOR BENEFICIAL USE 2, BEFORE  
2 TRANSFERRING THE PROPERTY, THE OWNER SHALL PROVIDE NOTICE TO A  
3 PROSPECTIVE TRANSFEREE THAT THE MATERIAL WAS USED FOR BENEFICIAL  
4 USE 2, INCLUDING THE DATE AND LOCATION OF THE USE, IF KNOWN. IF A  
5 CONTRACTOR, CONSULTANT, OR AGENT OF AN OWNER OF PROPERTY USES A  
6 MATERIAL ON THE PROPERTY FOR BENEFICIAL USE 2, THE CONTRACTOR,  
7 CONSULTANT, OR AGENT SHALL PROVIDE NOTICE TO THE OWNER THAT THE  
8 MATERIAL WAS USED FOR BENEFICIAL USE 2, INCLUDING THE DATE AND  
9 LOCATION OF THE USE.

10 SEC. 11551A. THIS PART DOES NOT REQUIRE THE USE OF ANY  
11 BENEFICIAL USE BY-PRODUCT, INCLUDING, BUT NOT LIMITED TO, THE  
12 USES AND BENEFICIAL USE BY-PRODUCTS IDENTIFIED IN SECTIONS 11502  
13 TO 11506, BY ANY GOVERNMENTAL ENTITY OR ANY OTHER PERSON.

14 SEC. 11552. (1) WRITTEN NOTICE SHALL BE SUBMITTED TO THE  
15 DEPARTMENT BEFORE A BENEFICIAL USE BY-PRODUCT IS USED FOR  
16 BENEFICIAL USE 2 AS CONSTRUCTION FILL AT A PARTICULAR SITE FOR  
17 THE FIRST TIME, IF THE AMOUNT USED WILL EXCEED 5,000 CUBIC YARDS.  
18 THE GENERATOR OF THE BENEFICIAL USE BY-PRODUCT SHALL SUBMIT THE  
19 NOTICE UNLESS THE GENERATOR TRANSFERS MATERIAL TO A BROKER, IN  
20 WHICH CASE THE BROKER SHALL SUBMIT THE NOTICE.

21 (2) BY OCTOBER 30 OF EACH YEAR, ANY GENERATOR OR BROKER OF  
22 MORE THAN 1,000 CUBIC YARDS OF MATERIAL USED AS BENEFICIAL USE  
23 BY-PRODUCTS FOR BENEFICIAL USE 1, 2, OR 4 IN THE IMMEDIATELY  
24 PRECEDING PERIOD OF OCTOBER 1 TO SEPTEMBER 30 OR ANY PERSON THAT  
25 USES OR REUSES MORE THAN 1,000 CUBIC YARDS OF A SOURCE SEPARATED  
26 MATERIAL IN THAT PERIOD SHALL SUBMIT A REPORT TO THE DEPARTMENT  
27 CONTAINING ALL OF THE FOLLOWING INFORMATION, AS APPLICABLE:

1 (A) THE BUSINESS NAME, ADDRESS, TELEPHONE NUMBER, AND NAME  
2 OF A CONTACT PERSON FOR THE GENERATOR, BROKER, OR OTHER PERSON.

3 (B) THE TYPES AND APPROXIMATE AMOUNTS OF BENEFICIAL USE BY-  
4 PRODUCTS GENERATED, BROKERED, AND STORED DURING THAT PERIOD.

5 (C) THE APPROXIMATE AMOUNT OF BENEFICIAL USE BY-PRODUCTS  
6 SHIPPED OFF SITE DURING THAT PERIOD AND THE USES AND CONDITIONS  
7 OF USE.

8 (D) THE AMOUNT OF SOURCE SEPARATED MATERIALS USED OR REUSED.

9 (3) A GENERATOR OR BROKER MAY DESIGNATE THE INFORMATION  
10 REQUIRED IN THE REPORT UNDER SUBSECTION (2)(B) AND (C) AS  
11 CONFIDENTIAL BUSINESS INFORMATION. IF THE SCOPE OF A REQUEST FOR  
12 PUBLIC RECORDS UNDER SECTION 5 OF THE FREEDOM OF INFORMATION ACT,  
13 1976 PA 442, MCL 15.235, INCLUDES INFORMATION DESIGNATED BY THE  
14 GENERATOR OR BROKER AS CONFIDENTIAL, THE DEPARTMENT SHALL  
15 PROMPTLY NOTIFY THE GENERATOR OR BROKER OF THE REQUEST, INCLUDING  
16 THE DATE THE REQUEST WAS RECEIVED BY THE DEPARTMENT AND, PURSUANT  
17 TO THAT SECTION, SHALL ISSUE A NOTICE EXTENDING FOR 10 BUSINESS  
18 DAYS THE PERIOD DURING WHICH THE DEPARTMENT SHALL RESPOND TO THE  
19 REQUEST. THE DEPARTMENT SHALL GRANT THE REQUEST FOR THE  
20 INFORMATION UNLESS, WITHIN 12 BUSINESS DAYS AFTER THE DATE THE  
21 REQUEST WAS RECEIVED BY THE DEPARTMENT, THE GENERATOR OR BROKER  
22 DEMONSTRATES TO THE SATISFACTION OF THE DEPARTMENT THAT THE  
23 INFORMATION DESIGNATED AS CONFIDENTIAL SHOULD NOT BE DISCLOSED  
24 BECAUSE THE INFORMATION CONSTITUTES A TRADE SECRET OR SECRET  
25 PROCESS OR IS PRODUCTION OR COMMERCIAL INFORMATION THE DISCLOSURE  
26 OF WHICH WOULD JEOPARDIZE THE COMPETITIVE POSITION OF THE  
27 GENERATOR OR BROKER. IF THERE IS A DISPUTE OVER THE RELEASE OF

1 INFORMATION BETWEEN THE GENERATOR OR BROKER AND THE PERSON  
2 REQUESTING THE INFORMATION, THE DIRECTOR SHALL GRANT OR DENY THE  
3 REQUEST. THE DEPARTMENT SHALL NOTIFY THE GENERATOR OR BROKER OF A  
4 DECISION TO GRANT THE REQUEST AT LEAST 2 DAYS BEFORE THE RELEASE  
5 OF THE REQUESTED INFORMATION.

6 SEC. 11553. (1) CONSISTENT WITH THE REQUIREMENTS OF THIS  
7 PART, THE DEPARTMENT SHALL APPLY THIS SECTION SO AS TO PROMOTE  
8 AND FOSTER THE USE OF WASTES AND BY-PRODUCTS FOR RECYCLING OR  
9 BENEFICIAL PURPOSES.

10 (2) ANY PERSON MAY REQUEST THE DEPARTMENT, CONSISTENT WITH  
11 THE DEFINITIONS AND OTHER TERMS OF THIS PART, TO APPROVE A  
12 MATERIAL, A USE, OR A MATERIAL AND USE AS A SOURCE SEPARATED  
13 MATERIAL; A BENEFICIAL USE BY-PRODUCT FOR BENEFICIAL USE 1, 2, 4,  
14 OR 5; AN INERT MATERIAL; A LOW-HAZARD INDUSTRIAL WASTE; OR  
15 ANOTHER MATERIAL, USE, OR MATERIAL AND USE THAT CAN BE APPROVED  
16 UNDER THIS PART. AMONG OTHER THINGS, A PERSON MAY REQUEST THE  
17 DEPARTMENT TO APPROVE A USE THAT DOES NOT QUALIFY AS BENEFICIAL  
18 USE 2 UNDER SECTION 11502(4) (A) BECAUSE THE PROPERTY IS NOT  
19 NONRESIDENTIAL PROPERTY OR UNDER SECTION 11502(4) (A), (B), OR (C)  
20 BECAUSE THE MATERIAL EXCEEDS 4 FEET IN THICKNESS. A REQUEST UNDER  
21 THIS SUBSECTION SHALL CONTAIN A DESCRIPTION OF THE MATERIAL  
22 INCLUDING THE PROCESS GENERATING IT; RESULTS OF ANALYSES OF  
23 REPRESENTATIVE SAMPLES OF THE MATERIAL FOR ANY HAZARDOUS  
24 SUBSTANCES THAT THE PERSON HAS KNOWLEDGE OR REASON TO BELIEVE  
25 COULD BE PRESENT IN THE MATERIAL, BASED ON ITS SOURCE, ITS  
26 COMPOSITION, OR THE PROCESS THAT GENERATED IT; AND, IF  
27 APPLICABLE, A DESCRIPTION OF THE PROPOSED USE. THE ANALYSIS AND

1 SAMPLING OF THE MATERIAL UNDER THIS SUBSECTION SHALL BE  
2 CONSISTENT WITH THE METHODS CONTAINED IN THE EPA DOCUMENT  
3 ENTITLED "TEST METHODS FOR THE EVALUATION OF SOLID WASTE,  
4 PHYSICAL/CHEMICAL METHODS," SW 846 3RD EDITION; 1 OR MORE PEER-  
5 REVIEWED STANDARDS DEVELOPED BY A NATIONAL OR INTERNATIONAL  
6 ORGANIZATION, SUCH AS ASTM INTERNATIONAL; OR 1 OR MORE STANDARDS  
7 OR METHODS APPROVED BY THE DEPARTMENT OR THE EPA. THE DEPARTMENT  
8 SHALL APPROVE OR DENY THE REQUEST WITHIN 150 DAYS AFTER THE  
9 REQUEST IS RECEIVED, UNLESS THE PARTIES AGREE TO AN EXTENSION. IF  
10 THE DEPARTMENT DETERMINES THAT THE REQUEST DOES NOT INCLUDE  
11 SUFFICIENT INFORMATION, THE DEPARTMENT SHALL, NOT MORE THAN 60  
12 DAYS AFTER RECEIPT OF THE REQUEST, NOTIFY THE REQUESTER. THE  
13 NOTICE SHALL SPECIFY THE ADDITIONAL INFORMATION THAT IS REQUIRED.  
14 THE 150-DAY PERIOD IS TOLLED UNTIL THE REQUESTOR SUBMITS THE  
15 INFORMATION SPECIFIED IN THE NOTICE. IF THE DEPARTMENT APPROVES A  
16 REQUEST UNDER THIS SUBSECTION, THE APPROVAL SHALL INCLUDE THE  
17 FOLLOWING STATEMENT: "THIS APPROVAL DOES NOT REQUIRE ANY USE OF  
18 ANY BENEFICIAL USE BY-PRODUCT BY A GOVERNMENTAL ENTITY OR ANY  
19 OTHER PERSON." THE DEPARTMENT MAY IMPOSE CONDITIONS AND OTHER  
20 REQUIREMENTS CONSISTENT WITH THE PURPOSES OF THIS PART ON A  
21 MATERIAL, A USE, OR A MATERIAL AND USE APPROVED UNDER THIS  
22 SECTION THAT ARE REASONABLY NECESSARY FOR THE USE. IF A REQUEST  
23 IS APPROVED WITH CONDITIONS OR OTHER REQUIREMENTS, THE APPROVAL  
24 SHALL SPECIFICALLY STATE THE CONDITIONS OR OTHER REQUIREMENTS. IF  
25 THE REQUEST IS DENIED, THE DEPARTMENT'S DENIAL SHALL, TO THE  
26 EXTENT PRACTICAL, STATE WITH SPECIFICITY ALL OF THE REASONS FOR  
27 DENIAL. IF THE DEPARTMENT FAILS TO APPROVE OR DENY THE REQUEST

1 WITHIN THE 150-DAY PERIOD, THE REQUEST IS CONSIDERED APPROVED. A  
2 PERSON REQUESTING APPROVAL UNDER THIS SUBSECTION MAY SEEK REVIEW  
3 OF ANY FINAL DEPARTMENT DECISION PURSUANT TO SECTION 631 OF THE  
4 REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.631.

5 (3) THE DEPARTMENT SHALL APPROVE A MATERIAL FOR A SPECIFIED  
6 USE AS A BENEFICIAL USE BY-PRODUCT IF ALL OF THE FOLLOWING  
7 REQUIREMENTS ARE MET:

8 (A) THE MATERIAL IS AN INDUSTRIAL OR COMMERCIAL MATERIAL  
9 THAT IS OR HAS THE POTENTIAL TO BE GENERATED IN HIGH VOLUMES.

10 (B) THE PROPOSED USE SERVES A LEGITIMATE BENEFICIAL PURPOSE  
11 OTHER THAN PROVIDING A MEANS TO DISCARD THE MATERIAL.

12 (C) A MARKET EXISTS FOR THE MATERIAL OR THERE IS A  
13 REASONABLE POTENTIAL FOR THE CREATION OF A NEW MARKET FOR THE  
14 MATERIAL IF IT IS APPROVED AS A BENEFICIAL USE BY-PRODUCT.

15 (D) THE MATERIAL AND USE MEET ALL FEDERAL AND STATE CONSUMER  
16 PROTECTION AND PRODUCT SAFETY LAWS AND REGULATIONS.

17 (E) THE MATERIAL MEETS ALL OF THE FOLLOWING REQUIREMENTS:

18 (i) HAZARDOUS SUBSTANCES IN THE MATERIAL DO NOT POSE A DIRECT  
19 CONTACT HEALTH HAZARD TO HUMANS.

20 (ii) THE MATERIAL DOES NOT LEACH, DECOMPOSE, OR DISSOLVE IN A  
21 WAY THAT FORMS AN UNACCEPTABLY CONTAMINATED LEACHATE. AN  
22 UNACCEPTABLY CONTAMINATED LEACHATE IS ONE THAT EXCEEDS EITHER  
23 PART 201 GENERIC RESIDENTIAL GROUNDWATER DRINKING WATER CRITERIA  
24 OR SURFACE WATER QUALITY STANDARDS ESTABLISHED UNDER PART 31.

25 (iii) THE MATERIAL DOES NOT PRODUCE EMISSIONS THAT VIOLATE  
26 PART 55 OR THAT CREATE A NUISANCE.

27 (4) THE DEPARTMENT MAY APPROVE A MATERIAL FOR A SPECIFIED

1 USE AS A BENEFICIAL USE BY-PRODUCT IF THE MATERIAL MEETS THE  
2 REQUIREMENTS OF SUBSECTION (3) (A), (B), (C), AND (D) BUT FAILS TO  
3 MEET THE REQUIREMENTS OF SUBSECTION (3) (E) AND IF THE DEPARTMENT  
4 DETERMINES THAT THE MATERIAL AND USE ARE PROTECTIVE OF THE PUBLIC  
5 HEALTH AND ENVIRONMENT. IN MAKING THE DETERMINATION, THE  
6 DEPARTMENT SHALL CONSIDER THE POTENTIAL FOR EXPOSURE AND RISK TO  
7 HUMAN HEALTH AND THE ENVIRONMENT GIVEN THE NATURE OF THE  
8 MATERIAL, ITS PROPOSED USE, AND THE ENVIRONMENTAL FATE AND  
9 TRANSPORT OF ANY HAZARDOUS SUBSTANCES IN THE MATERIAL IN SOIL,  
10 GROUNDWATER, OR OTHER RELEVANT MEDIA.

11 (5) THE DEPARTMENT SHALL APPROVE A MATERIAL AS INERT IF ALL  
12 OF THE FOLLOWING REQUIREMENTS ARE MET:

13 (A) THE MATERIAL IS PROPOSED TO BE USED FOR A LEGITIMATE  
14 PURPOSE OTHER THAN A MEANS TO DISPOSE OF THE MATERIAL.

15 (B) HAZARDOUS SUBSTANCES IN THE MATERIAL DO NOT POSE A  
16 DIRECT CONTACT HEALTH HAZARD TO HUMANS.

17 (C) THE MATERIAL DOES NOT LEACH, DECOMPOSE, OR DISSOLVE IN A  
18 WAY THAT FORMS AN UNACCEPTABLY CONTAMINATED LEACHATE UPON CONTACT  
19 WITH WATER OR OTHER LIQUIDS LIKELY TO BE FOUND AT THE AREA OF  
20 PLACEMENT, DISPOSAL, OR USE. AN UNACCEPTABLY CONTAMINATED  
21 LEACHATE IS LEACHATE THAT EXCEEDS PART 201 GENERIC RESIDENTIAL  
22 GROUNDWATER DRINKING WATER CRITERIA OR SURFACE WATER QUALITY  
23 STANDARDS ESTABLISHED UNDER PART 31.

24 (D) THE MATERIAL DOES NOT PRODUCE EMISSIONS THAT VIOLATE  
25 PART 55 OR THAT CREATE A NUISANCE.

26 (6) THE DEPARTMENT MAY APPROVE A MATERIAL AS INERT IF THE  
27 MATERIAL MEETS THE REQUIREMENTS OF SUBSECTION (5) (A) BUT FAILS TO

1 MEET THE REQUIREMENTS OF SUBSECTION (5) (B), (C), OR (D) AND IF  
2 THE DEPARTMENT DETERMINES THAT THE MATERIAL IS PROTECTIVE OF THE  
3 PUBLIC HEALTH AND ENVIRONMENT. IN MAKING THE DETERMINATION, THE  
4 DEPARTMENT SHALL CONSIDER THE POTENTIAL FOR EXPOSURE AND RISK TO  
5 HUMAN HEALTH AND THE ENVIRONMENT GIVEN THE NATURE OF THE  
6 MATERIAL, ITS PROPOSED USE, AND THE ENVIRONMENTAL FATE AND  
7 TRANSPORT OF ANY HAZARDOUS SUBSTANCES IN THE MATERIAL IN SOIL,  
8 GROUNDWATER, OR OTHER RELEVANT MEDIA.

9 (7) THE DEPARTMENT SHALL APPROVE A MATERIAL AS A LOW-HAZARD  
10 INDUSTRIAL WASTE IF HAZARDOUS SUBSTANCES IN REPRESENTATIVE  
11 SAMPLES OF THE MATERIAL DO NOT LEACH, USING, AT THE OPTION OF THE  
12 GENERATOR, EPA METHOD 1311, 1312, OR ANY OTHER METHOD APPROVED BY  
13 THE DEPARTMENT THAT MORE ACCURATELY SIMULATES MOBILITY, ABOVE THE  
14 HIGHER OF THE FOLLOWING:

15 (A) ONE-TENTH THE HAZARDOUS WASTE TOXICITY CHARACTERISTIC  
16 THRESHOLD AS SET FORTH IN RULES PROMULGATED UNDER PART 111.

17 (B) TEN TIMES THE GENERIC RESIDENTIAL GROUNDWATER DRINKING  
18 WATER CLEANUP CRITERIA AS SET FORTH IN RULES PROMULGATED UNDER  
19 PART 201.

20 (8) THE DEPARTMENT SHALL APPROVE A MATERIAL AS A SOURCE  
21 SEPARATED MATERIAL IF THE PERSON WHO SEEKS THE DESIGNATION  
22 DEMONSTRATES THAT THE MATERIAL CAN BE RECYCLED OR CONVERTED INTO  
23 RAW MATERIALS OR NEW PRODUCTS BY BEING RETURNED TO THE ORIGINAL  
24 PROCESS FROM WHICH IT WAS GENERATED, BY USE OR REUSE AS AN  
25 INGREDIENT IN AN INDUSTRIAL PROCESS TO MAKE A PRODUCT, OR BY USE  
26 OR REUSE AS AN EFFECTIVE SUBSTITUTE FOR A COMMERCIAL PRODUCT. TO  
27 QUALIFY AS A SOURCE SEPARATED MATERIAL, THE MATERIAL, PRODUCT, OR

1 REUSE MUST MEET ALL FEDERAL AND STATE CONSUMER PROTECTION AND  
2 PRODUCT SAFETY LAWS AND REGULATIONS AND MUST NOT CREATE A  
3 NUISANCE. IF A MATERIAL WILL BE APPLIED TO OR PLACED ON THE LAND,  
4 OR WILL BE USED TO PRODUCE PRODUCTS THAT ARE APPLIED TO OR PLACED  
5 ON THE LAND, THE MATERIAL MUST QUALIFY AS AN INERT MATERIAL OR  
6 BENEFICIAL USE BY-PRODUCT.

7 (9) ANY WRITTEN DETERMINATION BY THE DEPARTMENT MADE PRIOR  
8 TO THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS  
9 SECTION DESIGNATING A MATERIAL AS AN INERT MATERIAL, AN INERT  
10 MATERIAL APPROPRIATE FOR GENERAL REUSE, AN INERT MATERIAL  
11 APPROPRIATE FOR REUSE AT A SPECIFIC LOCATION, AN INERT MATERIAL  
12 APPROPRIATE FOR SPECIFIC REUSE INSTEAD OF VIRGIN MATERIAL, A  
13 SOURCE SEPARATED MATERIAL, A SITE SEPARATED MATERIAL, A LOW-  
14 HAZARD INDUSTRIAL WASTE, OR A NON-SOLID-WASTE MATERIAL REMAINS IN  
15 EFFECT ACCORDING TO ITS TERMS OR UNTIL FORFEITED IN WRITING BY  
16 THE PERSON WHO RECEIVED THE DETERMINATION. UPON TERMINATION,  
17 EXPIRATION, OR FORFEITURE OF THE WRITTEN DETERMINATION, THE  
18 CURRENT REQUIREMENTS OF THIS PART CONTROL. THE AMENDMENTS MADE TO  
19 THIS PART BY THE AMENDATORY ACT THAT ADDED THIS SECTION DO NOT  
20 RESCIND, INVALIDATE, LIMIT, OR MODIFY ANY SUCH PRIOR  
21 DETERMINATION IN ANY WAY.

22 SEC. 11554. THE DEPARTMENT OF AGRICULTURE AND RURAL  
23 DEVELOPMENT, AND NOT THE DEPARTMENT OF ENVIRONMENTAL QUALITY,  
24 SHALL ADMINISTER AND ENFORCE THIS PART IN CONNECTION WITH ANY  
25 MATERIAL THAT IS LICENSED OR REGISTERED UNDER PART 85 OR 1955 PA  
26 162, MCL 290.531 TO 290.538.

27 Sec. 20101. (1) As used in this part:

1 (a) "Act of God" means an unanticipated grave natural  
2 disaster or other natural phenomenon of an exceptional,  
3 inevitable, and irresistible character, the effects of which  
4 could not have been prevented or avoided by the exercise of due  
5 care or foresight.

6 (b) "Agricultural property" means real property used for  
7 farming in any of its branches, including cultivating of soil;  
8 growing and harvesting of any agricultural, horticultural, or  
9 floricultural commodity; dairying; raising of livestock, bees,  
10 fish, fur-bearing animals, or poultry; turf and tree farming; and  
11 performing any practices on a farm as an incident to, or in  
12 conjunction with, these farming operations. Agricultural property  
13 does not include property used for commercial storage,  
14 processing, distribution, marketing, or shipping operations.

15 (c) "All appropriate inquiry" means an evaluation of  
16 environmental conditions at a property at the time of purchase,  
17 occupancy, or foreclosure that reasonably defines the existing  
18 conditions and circumstances at the property in conformance with  
19 40 CFR 312.

20 (d) "Attorney general" means the department of the attorney  
21 general.

22 (e) "Background concentration" means the concentration or  
23 level of a hazardous substance that exists in the environment at  
24 or regionally proximate to a facility that is not attributable to  
25 any release at or regionally proximate to the facility. A person  
26 may demonstrate ~~a~~**THAT A HAZARDOUS SUBSTANCE IS NOT PRESENT AT A**  
27 **LEVEL THAT EXCEEDS** background concentration ~~for a hazardous~~

1 ~~substance~~ by any of the following methods:

2       (i) The hazardous substance complies with the statewide  
3 default background levels under R ~~299.5746~~ **299.46** of the Michigan  
4 administrative code.

5       (ii) The hazardous substance is listed in the department's  
6 2005 Michigan background soil survey and falls within the typical  
7 ranges published in that document.

8       (iii) The hazardous substance is listed in any other study or  
9 survey conducted or approved by the department and is within the  
10 concentrations or falls within the typical ranges published in  
11 that study or survey.

12       (iv) A site-specific demonstration.

13       (f) "Baseline environmental assessment" means a written  
14 document that describes the results of an all appropriate inquiry  
15 and the sampling and analysis that confirm that the property is a  
16 facility. However, for purposes of a baseline environmental  
17 assessment, the all appropriate inquiry under 40 CFR 312.20(a)  
18 may be conducted within 45 days after the date of acquisition of  
19 a property and the components of an all appropriate inquiry under  
20 40 CFR 312.20(b) and 40 CFR 312.20(c)(3) may be conducted or  
21 updated within 45 days after the date of acquisition of a  
22 property.

23       (g) "Board" means the brownfield redevelopment board created  
24 in section 20104a.

25       (h) "Certificate of completion" means a written response  
26 provided by the department confirming that a response activity  
27 has been completed in accordance with the applicable requirements

1 of this part and is approved by the department.

2 (i) "Cleanup criteria for unrestricted residential use"  
3 means either of the following:

4 (i) Cleanup criteria that satisfy the requirements for the  
5 residential category in section 20120a(1)(a) or (16).

6 (ii) Cleanup criteria for unrestricted residential use under  
7 part 213.

8 (j) "Department" means the director ~~of the department of~~  
9 ~~environmental quality~~ or his or her designee to whom the director  
10 delegates a power or duty by written instrument.

11 (k) "Director" means the director of the department of  
12 environmental quality.

13 (l) "Directors" means the directors or their designees of the  
14 departments of environmental quality, community health,  
15 agriculture and rural development, and state police.

16 (m) "Disposal" means the discharge, deposit, injection,  
17 dumping, spilling, leaking, or placing of any hazardous substance  
18 into or on any land or water so that the hazardous substance or  
19 any constituent of the hazardous substance may enter the  
20 environment or be emitted into the air or discharged into any  
21 groundwater or surface water.

22 (n) "Enforcement costs" means court expenses, reasonable  
23 attorney fees of the attorney general, and other reasonable  
24 expenses of an executive department that are incurred in relation  
25 to enforcement under this part.

26 (o) "Environment" or "natural resources" means land, surface  
27 water, groundwater, subsurface strata, air, fish, wildlife, or

1 biota within the state.

2 (p) "Environmental contamination" means the release of a  
3 hazardous substance, or the potential release of a discarded  
4 hazardous substance, in a quantity which is or may become  
5 injurious to the environment or to the public health, safety, or  
6 welfare.

7 (q) "Evaluation" means those activities including, but not  
8 limited to, investigation, studies, sampling, analysis,  
9 development of feasibility studies, and administrative efforts  
10 that are needed to determine the nature, extent, and impact of a  
11 release or threat of release and necessary response activities.

12 (r) "Exacerbation" means the occurrence of either of the  
13 following caused by an activity undertaken by the person who owns  
14 or operates the property, with respect to contamination for which  
15 the person is not liable:

16 (i) ~~Contamination that has migrated~~ **MIGRATION OF**  
17 **CONTAMINATION** beyond the boundaries of the property ~~which~~ **THAT** is  
18 the source of the release at levels above cleanup criteria for  
19 unrestricted residential use unless a criterion is not relevant  
20 because exposure is reliably restricted as otherwise provided in  
21 this part.

22 (ii) A change in facility conditions that increases response  
23 activity costs.

24 (s) "Facility" means any area, place, or property where a  
25 hazardous substance in excess of the concentrations that satisfy  
26 the cleanup criteria for unrestricted residential use has been  
27 released, deposited, disposed of, or otherwise comes to be

1 located. Facility does not include any area, place, or property  
2 where any of the following conditions are satisfied:

3 (i) Response activities have been completed under this part  
4 that satisfy the cleanup criteria for unrestricted residential  
5 use.

6 (ii) Corrective action has been completed under part 213 that  
7 satisfies the cleanup criteria for unrestricted residential use.

8 (iii) Site-specific criteria that have been approved by the  
9 department for application at the area, place, or property are  
10 met or satisfied and both of the following conditions are met:

11 (A) The site-specific criteria do not depend on any land use  
12 or resource use restriction to ensure protection of the public  
13 health, safety, or welfare or the environment.

14 (B) Hazardous substances at the area, place, or property  
15 that are not addressed by site-specific criteria satisfy the  
16 cleanup criteria for unrestricted residential use.

17 **(iv) HAZARDOUS SUBSTANCES IN CONCENTRATIONS ABOVE**  
18 **UNRESTRICTED RESIDENTIAL CLEANUP CRITERIA ARE PRESENT DUE ONLY TO**  
19 **THE PLACEMENT, STORAGE, OR USE OF BENEFICIAL USE BY-PRODUCTS OR**  
20 **INERT MATERIALS AT THE AREA, PLACE, OR PROPERTY IN COMPLIANCE**  
21 **WITH PART 115.**

22 (t) "Feasibility study" means a process for developing,  
23 evaluating, and selecting appropriate response activities.

24 (u) "Financial assurance" means a performance bond, escrow,  
25 cash, certificate of deposit, irrevocable letter of credit,  
26 corporate guarantee, or other equivalent security, or any  
27 combination thereof.

1 (v) "Foreclosure" means possession of a property by a lender  
2 on which it has foreclosed on a security interest or the  
3 expiration of a lawful redemption period, whichever occurs first.

4 (w) "Free product" means a hazardous substance in a liquid  
5 phase equal to or greater than 1/8 inch of measurable thickness  
6 that is not dissolved in water and that has been released into  
7 the environment.

8 (x) "Fund" means the cleanup and redevelopment fund  
9 established in section 20108.

10 (y) "Hazardous substance" means 1 or more of the following,  
11 but does not include fruit, vegetable, or field crop residuals or  
12 processing by-products, or aquatic plants, that are applied to  
13 the land for an agricultural use or for use as an animal feed, if  
14 the use is consistent with generally accepted agricultural  
15 management practices at the time of the application:

16 (i) Any substance that the department demonstrates, on a case  
17 by case basis, poses an unacceptable risk to the public health,  
18 safety, or welfare, or the environment, considering the fate of  
19 the material, dose-response, toxicity, or adverse impact on  
20 natural resources.

21 (ii) Hazardous substance as defined in the comprehensive  
22 environmental response, compensation, and liability act, 42 USC  
23 9601 to 9675.

24 (iii) Hazardous waste as defined in part 111.

25 (iv) Petroleum as described ~~in part 213.~~ **AS A REGULATED**  
26 **SUBSTANCE IN SECTION 21303.**

27 (z) "Interim response activity" means the cleanup or removal

1 of a released hazardous substance or the taking of other actions,  
2 prior to the implementation of a remedial action, as may be  
3 necessary to prevent, minimize, or mitigate injury to the public  
4 health, safety, or welfare, or to the environment. Interim  
5 response activity also includes, but is not limited to, measures  
6 to limit access, replacement of water supplies, and temporary  
7 relocation of people as determined to be necessary by the  
8 department. In addition, interim response activity means the  
9 taking of other actions as may be necessary to prevent, minimize,  
10 or mitigate a threatened release.

11 (aa) "Lender" means any of the following:

12 (i) A state or nationally chartered bank.

13 (ii) A state or federally chartered savings and loan  
14 association or savings bank.

15 (iii) A state or federally chartered credit union.

16 (iv) Any other state or federally chartered lending  
17 institution. ~~or~~

18 (v) **ANY STATE OR FEDERALLY** regulated affiliate or regulated  
19 subsidiary of any entity listed in ~~this subparagraph or~~  
20 subparagraphs (i) to ~~(iii)~~ (iv) .

21 (vi) ~~(v)~~—An insurance company authorized to do business in  
22 this state pursuant to the insurance code of 1956, 1956 PA 218,  
23 MCL 500.100 to 500.8302.

24 (vii) ~~(vi)~~—A motor vehicle **SALES** finance company subject to  
25 the motor vehicle finance act, 1950 (Ex Sess) PA 27, MCL 492.101  
26 to 492.141, with net assets in excess of \$50,000,000.00.

27 (viii) ~~(vii)~~—A foreign bank.

1           *(ix)* ~~*(viii)*~~—A retirement fund regulated pursuant to state law  
2 or a pension fund regulated pursuant to federal law with net  
3 assets in excess of \$50,000,000.00.

4           *(x)* ~~*(ix)*~~—A state or federal agency authorized by law to hold  
5 a security interest in real property or a local unit of  
6 government holding a reversionary interest in real property.

7           *(xi)* ~~*(x)*~~—A nonprofit tax exempt organization created to  
8 promote economic development in which a majority of the  
9 organization's assets are held by a local unit of government.

10           *(xii)* ~~*(xi)*~~—Any other person who loans money for the purchase  
11 of or improvement of real property.

12           *(xiii)* ~~*(xii)*~~—Any person who retains or receives a security  
13 interest to service a debt or to secure a performance obligation.

14           (bb) "Local health department" means that term as defined in  
15 section 1105 of the public health code, 1978 PA 368, MCL  
16 333.1105.

17           (cc) "Local unit of government" means a county, city,  
18 township, or village, an agency of a local unit of government, an  
19 authority or any other public body or entity created by or  
20 pursuant to state law. Local unit of government does not include  
21 ~~the~~ **THIS** state, ~~or~~ **THE** federal government, or a state or federal  
22 agency.

23           (dd) "Method detection limit" means the minimum  
24 concentration of a hazardous substance ~~which~~ **THAT** can be measured  
25 and reported with 99% confidence that the analyte concentration  
26 is greater than zero and is determined from analysis of a sample  
27 in a given matrix that contains the analyte.

1           (ee) "No further action letter" means a written response  
2 provided by the department under section 20114d confirming that a  
3 no further action report has been approved after review by the  
4 department.

5           (ff) "No further action report" means a report under section  
6 20114d detailing the completion of remedial actions and including  
7 a postclosure plan and a postclosure agreement, if appropriate.

8           (gg) "Operator" means a person who is in control of or  
9 responsible for the operation of a facility. Operator does not  
10 include either of the following:

11           (i) A person who holds indicia of ownership primarily to  
12 protect the person's security interest in the facility, unless  
13 that person participates in the management of the facility as  
14 described in section 20101a.

15           (ii) A person who is acting as a fiduciary in compliance with  
16 section 20101b.

17           (hh) "Owner" means a person who owns a facility. Owner does  
18 not include either of the following:

19           (i) A person who holds indicia of ownership primarily to  
20 protect the person's security interest in the facility,  
21 including, but not limited to, a vendor's interest under a  
22 recorded land contract, unless that person participates in the  
23 management of the facility as described in section 20101a.

24           (ii) A person who is acting as a fiduciary in compliance with  
25 section 20101b.

26           (ii) "Panel" means the response activity review panel  
27 created in section 20114e.

1 (jj) "Permitted release" means 1 or more of the following:

2 (i) A release in compliance with an applicable, legally  
3 enforceable permit issued under state law.

4 (ii) A lawful and authorized discharge into a permitted waste  
5 treatment facility.

6 (iii) A federally permitted release as defined in the  
7 comprehensive environmental response, compensation, and liability  
8 act, 42 USC 9601 to 9675.

9 (kk) "Postclosure agreement" means an agreement between the  
10 department and a person who has submitted a no further action  
11 report that prescribes, as appropriate, activities required to be  
12 undertaken upon completion of remedial actions as provided for in  
13 section 20114d.

14 (ll) "Postclosure plan" means a plan for land use or resource  
15 use restrictions or permanent markers at a facility upon  
16 completion of remedial actions as ~~required under~~ **PROVIDED FOR IN**  
17 section 20114c.

18 (mm) "Release" includes, but is not limited to, any  
19 spilling, leaking, pumping, pouring, emitting, emptying,  
20 discharging, injecting, escaping, leaching, dumping, or disposing  
21 of a hazardous substance into the environment, or the abandonment  
22 or discarding of barrels, containers, and other closed  
23 receptacles containing a hazardous substance. Release does not  
24 include any of the following:

25 (i) A release that results in exposure to persons solely  
26 within a workplace, with respect to a claim that these persons  
27 may assert against their employers.

1           (ii) Emissions from the engine exhaust of a motor vehicle,  
2 rolling stock, aircraft, or vessel.

3           (iii) A release of source, by-product, or special nuclear  
4 material from a nuclear incident, as those terms are defined in  
5 the atomic energy act of 1954, 42 USC 2011 to ~~2297h-13, 2286I~~, if  
6 the release is subject to requirements with respect to financial  
7 protection established by the nuclear regulatory commission under  
8 42 USC 2210, or any release of source by-product or special  
9 nuclear material from any processing site designated under 42 USC  
10 7912(a)(1) or 42 USC 7942(a).

11           (iv) If applied according to label directions and according  
12 to generally accepted agricultural and management practices at  
13 the time of the application, the application of a fertilizer,  
14 soil conditioner, agronomically applied manure, or pesticide, or  
15 fruit, vegetable, or field crop residuals or processing by-  
16 products, aquatic plants, or a combination of these substances.  
17 As used in this subparagraph, fertilizer and soil conditioner  
18 have the meaning given to these terms in part 85, and pesticide  
19 has the meaning given to that term in part 83.

20           (v) ~~A release does not include~~ **APPLICATION OF** fruits,  
21 vegetables, field crop processing by-products, or aquatic plants  
22 ~~, that are applied to the land for an agricultural use or for use~~  
23 as an animal feed, if the use is consistent with generally  
24 accepted agricultural and management practices at the time of the  
25 application.

26           (vi) The relocation of soil under section 20120c.

27           (vii) **THE PLACEMENT, STORAGE, OR USE OF BENEFICIAL USE BY-**

1 **PRODUCTS OR INERT MATERIALS AT THE SITE OF STORAGE OR USE IF IN**  
2 **COMPLIANCE WITH PART 115.**

3 (nn) "Remedial action" includes, but is not limited to,  
4 cleanup, removal, containment, isolation, destruction, or  
5 treatment of a hazardous substance released or threatened to be  
6 released into the environment, monitoring, maintenance, or the  
7 taking of other actions that may be necessary to prevent,  
8 minimize, or mitigate injury to the public health, safety, or  
9 welfare, or to the environment.

10 (oo) "Remedial action plan" means a work plan for performing  
11 remedial action under this part.

12 (pp) "Residential closure" means a property at which the  
13 contamination has been addressed in a no further action report  
14 that satisfies the limited residential cleanup criteria under  
15 section 20120a(1)(c) or the site-specific residential cleanup  
16 criteria under sections 20120a(2) and 20120b, that contains land  
17 use or resource use restrictions, and that is approved by the  
18 department or is considered approved by the department under  
19 section 20120d.

20 (qq) "Response activity" means evaluation, interim response  
21 activity, remedial action, demolition, providing an alternative  
22 water supply, or the taking of other actions necessary to protect  
23 the public health, safety, or welfare, or the environment or the  
24 natural resources. Response activity also includes health  
25 assessments or health effect studies carried out under the  
26 supervision, or with the approval of, the department of community  
27 health and enforcement actions related to any response activity.

1 (rr) "Response activity costs" or "costs of response  
2 activity" means all costs incurred in taking or conducting a  
3 response activity, including enforcement costs.

4 (ss) "Response activity plan" means a plan for undertaking  
5 response activities. A response activity plan may include 1 or  
6 more of the following:

7 (i) A plan to undertake interim response activities.

8 (ii) A plan for evaluation activities.

9 (iii) A feasibility study.

10 (iv) A remedial action plan.

11 (tt) "Security interest" means any interest, including a  
12 reversionary interest, in real property created or established  
13 for the purpose of securing a loan or other obligation. Security  
14 interests include, but are not limited to, mortgages, deeds of  
15 trusts, liens, and title pursuant to lease financing  
16 transactions. Security interests may also arise from transactions  
17 such as sale and leasebacks, conditional sales, installment  
18 sales, trust receipt transactions, certain assignments, factoring  
19 agreements, accounts receivable financing arrangements,  
20 consignments, or any other transaction in which evidence of title  
21 is created if the transaction creates or establishes an interest  
22 in real property for the purpose of securing a loan or other  
23 obligation.

24 (uu) "Target detection limit" means the detection limit for  
25 a hazardous substance in a given environmental medium that is  
26 specified by the department on a list that it publishes not more  
27 than once a year. The department shall identify 1 or more

1 analytical methods, when a method is available, that are judged  
2 to be capable of achieving the target detection limit for a  
3 hazardous substance in a given environmental medium. The target  
4 detection limit for a given hazardous substance is greater than  
5 or equal to the method detection limit for that hazardous  
6 substance. In establishing a target detection limit, the  
7 department shall consider the following factors:

8 (i) The low level capabilities of methods published by  
9 government agencies.

10 (ii) Reported method detection limits published by state  
11 laboratories.

12 (iii) Reported method detection limits published by commercial  
13 laboratories.

14 (iv) The need to be able to measure a hazardous substance at  
15 concentrations at or below cleanup criteria.

16 (vv) "Threatened release" or "threat of release" means any  
17 circumstance that may reasonably be anticipated to cause a  
18 release.

19 (ww) "Venting groundwater" means groundwater that is  
20 entering a surface water of ~~the~~**THIS** state from a facility.

21 (2) As used in this part:

22 (a) The phrase "a person who is liable" includes a person  
23 who is described as being subject to liability in section 20126.  
24 The phrase "a person who is liable" does not presume that  
25 liability has been adjudicated.

26 (b) The phrase "this part" includes "rules promulgated under  
27 this part".

1           Sec. 20114e. (1) The director shall establish a response  
2 activity review panel to advise him or her on technical or  
3 scientific disputes, including disputes regarding assessment of  
4 risk, response activity plans, no further action reports,  
5 certificates of completion, and documentations of due care  
6 compliance under this part, and initial assessment reports, final  
7 assessment reports, closure reports, and documentations of due  
8 care compliance under part 213.

9           (2) The panel shall consist of 15 individuals, appointed by  
10 the director. Each member of the panel shall meet all of the  
11 following minimum requirements:

12           (a) Meet 1 or more of the following:

13           (i) Hold a current professional engineer's or professional  
14 geologist's license or registration from a state, tribe, or  
15 United States territory, or the Commonwealth of Puerto Rico, and  
16 have the equivalent of 6 years of full-time relevant experience.

17           (ii) Have a baccalaureate degree from an accredited  
18 institution of higher education in a discipline of engineering or  
19 science and the equivalent of 10 years of full-time relevant  
20 experience.

21           (iii) Have a master's degree from an accredited institution of  
22 higher education in a discipline of engineering or science and  
23 the equivalent of 8 years of full-time relevant experience.

24           (b) Remain current in his or her field through participation  
25 in continuing education or other activities.

26           (3) An individual is not eligible to be a member of the  
27 panel if any 1 of the following is true:

1 (a) The individual is a current employee of any office,  
2 department, or agency of ~~the~~**THIS** state.

3 (b) The individual is a party to 1 or more contracts with  
4 the department and the compensation paid under those contracts  
5 represented more than 5% of the individual's annual gross revenue  
6 in any of the preceding 3 years.

7 (c) The individual is employed by an entity that is a party  
8 to 1 or more contracts with the department and the compensation  
9 paid to the individual's employer under these contracts  
10 represented more than 5% of the employer's annual gross revenue  
11 in any of the preceding 3 years.

12 (d) The individual was employed by the department within the  
13 preceding 3 years.

14 (4) An individual appointed to the panel shall serve for a  
15 term of 3 years and may be reappointed for 1 additional 3-year  
16 term. After serving 2 consecutive terms, the individual shall not  
17 be a member of the panel for a period of at least 2 years before  
18 being eligible to be appointed to the panel again. The terms for  
19 members first appointed shall be staggered so that not more than  
20 5 vacancies are scheduled to occur in a single year. Individuals  
21 appointed to the panel shall serve without compensation. However,  
22 members of the panel may be reimbursed for their actual and  
23 necessary expenses incurred in the performance of their official  
24 duties as members of the panel.

25 (5) A vacancy on the panel shall be filled in the same  
26 manner as the original appointment.

27 (6) The business that the panel may perform shall be

1 conducted at a public meeting of the panel held in compliance  
2 with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

3 (7) A person who submitted a response activity plan; ~~—~~a no  
4 further action report; ~~—~~a request for certificate of completion  
5 ~~—~~or documentation of due care compliance under this part; or an  
6 initial assessment report, final assessment report, closure  
7 report, or documentation of due care compliance under part 213  
8 may appeal a decision made by the department regarding a  
9 technical or scientific dispute, including a dispute regarding  
10 assessment of risk, concerning the response activity plan, no  
11 further action report, request for certificate of completion,  
12 initial assessment report, final assessment report, closure  
13 report, or documentation of due care compliance by submitting a  
14 petition to the director. However, an issue that was addressed as  
15 part of the final decision of the director under section 21332 or  
16 that is the subject of a contested case hearing under section  
17 21332 is not eligible for review by the panel. The petition shall  
18 include the issues in dispute, the relevant facts upon which the  
19 dispute is based, factual data, analysis, opinion, and supporting  
20 documentation for the petitioner's position. The petitioner shall  
21 also submit a fee of \$3,500.00. If the director believes that the  
22 dispute may be able to be resolved without convening the panel,  
23 the director may contact the petitioner regarding the issues in  
24 dispute and may negotiate a resolution of the dispute. This  
25 negotiation period shall not exceed 45 days. If the dispute is  
26 resolved without convening the panel, any fee that is submitted  
27 with the petition shall be returned.

1           (8) If a dispute is not resolved pursuant to subsection (7),  
2 the director shall schedule a meeting of 5 members of the panel,  
3 selected on the basis of their relevant expertise, within 45 days  
4 after receiving the original petition. If the dispute involves an  
5 underground storage tank system, at least 3 of the members  
6 selected shall have relevant experience in the American society  
7 for testing and materials risk-based corrective action processes  
8 described in part 213. A member selected for the dispute  
9 resolution process shall agree not to accept employment by the  
10 person bringing the dispute before the panel, or to undertake any  
11 employment concerning the facility in question for a period of 1  
12 year after the decision has been rendered on the matter if that  
13 employment would represent more than 5% of the member's gross  
14 revenue in any of the preceding 3 years. The director shall  
15 provide a copy of all supporting documentation to members of the  
16 panel who will hear the dispute. An alternative member may be  
17 selected by the director to replace a member who is unable to  
18 participate in the dispute resolution process. Any action by the  
19 members selected to hear the dispute shall require a majority of  
20 the votes cast. The members selected for the dispute resolution  
21 process shall elect a chairperson of the dispute resolution  
22 process. At a meeting scheduled to hear the dispute,  
23 representatives of the petitioner and the department shall each  
24 be afforded an opportunity to present their positions to the  
25 panel. The fee that is received by the director along with the  
26 petition shall be forwarded to the state treasurer for deposit  
27 into the fund.

1           (9) Within 45 days after hearing the dispute, the members of  
2 the panel who were selected for and participated in the dispute  
3 resolution process shall make a recommendation regarding the  
4 petition and provide written notice of the recommendation to the  
5 director of the department and the petitioner. The written  
6 recommendation shall include the specific scientific or technical  
7 rationale for the recommendation. The panel's recommendation  
8 regarding the petition may be to adopt, modify, or reverse, in  
9 whole or in part, the department's decision that is the subject  
10 of the petition. If the panel does not make its recommendation  
11 within this 45-day time period, the decision of the department is  
12 the final decision of the director.

13           (10) Within 60 days after receiving written notice of the  
14 panel's recommendation, the director shall issue a final  
15 decision, in writing, regarding the petition. However, this time  
16 period may be extended by written agreement between the director  
17 and the petitioner. If the director agrees with the  
18 recommendation of the panel, the department shall incorporate the  
19 recommendation into its response to the response activity plan,  
20 no further action report, request for certificate of completion,  
21 initial assessment report, final assessment report, closure  
22 report, or documentation of due care compliance. If the director  
23 rejects the recommendation of the panel, the director shall issue  
24 a written decision to the petitioner with a specific rationale  
25 for rejecting the recommendation of the panel. If the director  
26 fails to issue a final decision within the time period provided  
27 for in this subsection, the recommendation of the panel shall be

1 considered the final decision of the director. The final decision  
2 of the director under this subsection is subject to review  
3 pursuant to section 631 of the revised judicature act of 1961,  
4 1961 PA 236, MCL 600.631.

5 (11) Upon request of the director, the panel shall make a  
6 recommendation to the department on whether a member should be  
7 removed from the panel. Prior to making this recommendation, the  
8 panel may convene a peer review panel to evaluate the conduct of  
9 the member with regard to compliance with this part.

10 (12) A member of the panel shall not participate in the  
11 dispute resolution process for any appeal in which that member  
12 has a conflict of interest. The director shall select a member of  
13 the panel to replace a member who has a conflict of interest  
14 under this subsection. For purposes of this subsection, a member  
15 has a conflict of interest if a petitioner has hired that member  
16 or the member's employer on any environmental matter within the  
17 preceding 3 years.

18 (13) As used in this section, "relevant experience" means  
19 active participation in the preparation, design, implementation,  
20 and assessment of remedial investigations, feasibility studies,  
21 interim response activities, and remedial actions under this part  
22 or experience in the American society for testing and materials  
23 risk-based corrective action processes described in part 213.  
24 This experience must demonstrate the exercise of sound  
25 professional judgment and knowledge of the requirements of this  
26 part or part 213, or both.

27 Sec. 20115. (1) The department, upon confirmation of a

1 release or threat of release of a substance that is regulated by  
2 the department of agriculture **AND RURAL DEVELOPMENT**, shall notify  
3 the department of agriculture **AND RURAL DEVELOPMENT**. The  
4 department of agriculture **AND RURAL DEVELOPMENT** shall undertake  
5 or ensure the initiation of the necessary response activity to  
6 immediately stop or prevent further releases at the site. The  
7 department of agriculture **AND RURAL DEVELOPMENT** shall consult  
8 with the department in the development of response activities if  
9 a release or threat of a release of a substance regulated by the  
10 department of agriculture **AND RURAL DEVELOPMENT** occurs. The  
11 department of agriculture **AND RURAL DEVELOPMENT** shall provide to  
12 the department information necessary to identify substances  
13 regulated by the department of agriculture **AND RURAL DEVELOPMENT**.  
14 This information shall include but is not limited to the list of  
15 state registered pesticides.

16 (2) As used in this section, "substance regulated by the  
17 department of agriculture **AND RURAL DEVELOPMENT**" means a  
18 ~~fertilizer or soil conditioner as defined in part 85, or a~~ **ANY OF**  
19 **THE FOLLOWING:**

20 (A) A pesticide as defined in ~~part 83.~~ **SECTION 8305.**

21 (B) **A FERTILIZER AS DEFINED IN SECTION 8501.**

22 (C) **A SOIL CONDITIONER AS DEFINED IN SECTION 8501A.**

23 (D) **A LIMING MATERIAL AS DEFINED IN SECTION 1 OF 1955 PA**  
24 **162, MCL 290.531.**

25 (3) Response activities conducted under this section shall  
26 be consistent with the requirements of section 8714(2).

27 Enacting section 1. R 299.4113 to R 299.4116, R299.4118, R

1 299.4119, and R 299.4122 to R 299.4127 of the Michigan  
2 administrative code are rescinded.

3 Enacting section 2. This amendatory act takes effect upon  
4 the expiration of 90 days after the date it is enacted into law.

5 Enacting section 3. This amendatory act does not take effect  
6 unless House Bill No. 5401 of the 97th Legislature is enacted  
7 into law.