

SENATE BILL No. 603

November 13, 1991, Introduced by Senators EHLERS, WARTNER and EMMONS and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to protect the environment and natural resources of the state; to codify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

ARTICLE I

PART 1

1 Sec. 101. This act shall be known and may be cited as the
2
3 "environmental protection code".

4 Sec. 102. Except as otherwise defined in this act, as used
5
6 in this act:

7 (a) "Commission" means the commission of natural resources.

8 (b) "Department" means the department of natural resources.

9 (c) "Director" means the director of the department.

10 (d) "Local unit of government" means a municipality or
11 county.

12 (e) "Municipality" means a city, village, or township.

13 (f) "Person" means an individual, partnership, corporation,
14 association, governmental entity, or other legal entity.

15 (g) "Rule" means a rule promulgated pursuant to the adminis-
16 trative procedures act of 1969, Act No. 306 of the Public Acts of
17 1969, being sections 24.201 to 24.328 of the Michigan Compiled
18 Laws.

19 PART 3 DEPARTMENT OF NATURAL RESOURCES

20 GENERAL POWERS AND DUTIES

21 Sec. 301. (1) A department of natural resources for this
22 state is created which possesses the powers and perform the
23 duties granted and imposed by this act and as otherwise provided
24 by law.

25 (2) The general administration of the powers and duties of
26 the department is vested in a commission of natural resources
27 which shall be composed of 7 members, not more than 4 of whom

1 shall be members of the same political party, appointed by the
2 governor by and with the advice and consent of the senate. A
3 member of the commission shall be selected with special reference
4 to that person's training and experience related to at least 1 of
5 the principal lines of activities vested in the department and
6 the ability and fitness of that person to deal with those
7 activities. The term of office of each member of the commission
8 shall be 4 years. The governor shall fill a vacancy occurring in
9 the membership of the commission and may remove a member of the
10 commission for cause after a hearing. Each member of the commis-
11 sion shall hold office until the appointment and qualification of
12 that member's successor.

13 (3) The commission, within 30 days after having qualified
14 and annually after that time, shall meet at its office in Lansing
15 and organize by electing a chairperson and by appointing a secre-
16 tary, who need not be a member of the commission. Four members
17 of the commission constitute a quorum for the transaction of
18 business. The business which the commission of natural resources
19 may perform shall be conducted at a public meeting of the commis-
20 sion held in compliance with the open meetings act, Act No. 267
21 of the Public Acts of 1976, being sections 15.261 to 15.275 of
22 the Michigan Compiled Laws. Public notice of the time, date, and
23 place of the meeting shall be given in the manner required by Act
24 No. 267 of the Public Acts of 1976. A meeting may be called by
25 the chairperson and shall be called on request of a majority of
26 the members of the commission. A meeting may be held as often as

1 necessary and at other places than the commissioners' offices at
2 Lansing. The commission shall meet at least once each month.

3 (4) The commission shall appoint and employ a director of
4 the department who shall continue in office at the pleasure of
5 the commission. The director shall appoint with the approval of
6 the commission a deputy director and other assistants and employ-
7 ees as are necessary to implement this part and any other law of
8 this state affecting the powers and duties of the department.
9 The deputy director may perform a duty or exercise a power con-
10 ferred by law upon the director at the time and to the extent the
11 duty and power is delegated to the deputy by the director. When
12 a vacancy in the office of director occurs, or the director is
13 unable to perform the director's duties or is absent from the
14 state, the powers and duties of the director as prescribed by law
15 shall be imposed on and transferred to the deputy director until
16 the vacancy is filled, or the director's inability or absence
17 from the state ceases.

18 (5) The compensation of the deputy director, the assistants,
19 and the employees, and the number of assistants and employees
20 shall be subject to the approval of the state administrative
21 board. The members of the commission shall not receive compensa-
22 tion under this part, but each member and the other officers and
23 employees of the department shall be entitled to reasonable
24 expenses while traveling in the performance of their duties pre-
25 scribed by this part. The salaries and expenses authorized under
26 this part shall be paid out of the state treasury in the same
27 manner as the salaries of other state officers and employees are

1 paid. The department of management and budget shall furnish
2 suitable offices and office equipment, at Lansing, for the use of
3 the department. Each member of the commission and the director
4 shall qualify by taking and subscribing to the constitutional
5 oath of office, and by filing it in the office of the secretary
6 of state.

7 Sec. 302. (1) The powers and duties previously vested by
8 law in the public domain commission; the state game, fish, and
9 forest fire commissioner and the state board of fish commis-
10 ers; the geological survey; and the Michigan state park commis-
11 sion are transferred to and vested in the department. Whenever,
12 in a law of this state, reference is made to a board, commission,
13 or officer whose powers and duties are transferred by this sec-
14 tion, reference shall be considered to be made to the
15 department.

16 (2) The commission may promulgate rules, not inconsistent
17 with law, governing its organization and procedure, and the
18 administration of this part, as considered expedient. The com-
19 mission may promulgate and enforce reasonable rules concerning
20 the use and occupancy of lands and property under its control;
21 may provide and develop facilities for outdoor recreation; may
22 conduct investigations it considers necessary for the proper
23 administration of this part; may remove and dispose of forest
24 products as required for the protection, reforestation, and
25 proper development and conservation of the lands and property
26 under control of the department; and may require the payment of a
27 fee as provided by law for a daily permit or other authorization

1 that allows the person to hunt and take waterfowl on a public
2 hunting area managed and developed for waterfowl. The commission
3 may require the wearing of a special tag or license as a condi-
4 tion of issuing a permit under this section.

5 (3) Except as provided in subsection (4), the commission may
6 enter into contracts for the taking of coal, oil, gas, and other
7 mineral products from state owned lands, upon a royalty basis or
8 upon another basis, and upon the terms the commission considers
9 just and equitable. The contract power shall include the making
10 of contracts for the storage of gas or other mineral products in
11 or upon state owned lands, if the consent of the state agency
12 having jurisdiction and control of the state owned land is first
13 obtained. A contract permitted under this section for the taking
14 of coal, oil, gas, or metallic mineral products, or for the stor-
15 age of gas or other mineral products, is not valid unless the
16 contract is approved by the state administrative board. Money
17 received from a contract permitted under this subsection, except
18 money received from lands acquired with game and fish protection
19 funds, shall be transmitted to the state treasurer for deposit in
20 the Michigan natural resources trust fund created in section 35
21 of article IX of the state constitution of 1963. However, the
22 money received from the payment of service charges by a person
23 using areas managed for waterfowl shall be credited to the game
24 and fish protection fund created in section 601 of the hunting
25 and fishing license act, Act No. 86 of the Public Acts of 1980,
26 being section 316.601 of the Michigan Compiled Laws, and used
27 only for the purposes provided by law. Money received from

1 bonuses, rentals, delayed rentals, royalties, and the direct sale
2 of resources, including forest resources, from lands acquired
3 with game and fish protection funds shall be credited to the game
4 and fish protection fund, created in section 601 of Act No. 86 of
5 the Public Acts of 1980, except as otherwise provided by law.

6 (4) The commission shall not enter into a contract that per-
7 mits drilling operations for the taking of oil or gas from the
8 lake bottomlands of the Great Lakes or connecting or connected
9 bays, harbors, or waterways, unless all drilling operations orig-
10 inate from locations above and inland of the ordinary high-water
11 mark. The commission shall not enter into a contract for explo-
12 ration of the lake bottomlands of the Great Lakes or connecting
13 or connected bays, harbors, or waterways that permits drilling
14 operations unless all drilling operations originate from loca-
15 tions above and inland of the ordinary high-water mark.

16 (5) This section does not permit a contract for the taking
17 of gravel, sand, coal, oil, gas, or other metallic mineral prod-
18 ucts that does not comply with applicable local ordinances and
19 state law.

20 Sec. 303. (1) The department shall protect and conserve the
21 natural resources of the state; provide and develop facilities
22 for outdoor recreation; prevent the destruction of timber and
23 other forest growth by fire or otherwise; promote the reforestation
24 of forest lands belonging to the state; prevent and guard against
25 the pollution of lakes and streams within the state, and enforce
26 all laws provided for that purpose with all authority granted by
27 law, and foster and encourage the protecting and propagation of

1 game and fish. On behalf of the people of the state, the
2 commission may accept gifts and grants of land and other property
3 and may buy, sell, exchange, or condemn land and other property,
4 for any of the purposes contemplated by this part. The depart-
5 ment may accept funds, money, or grants for development of salmon
6 and steelhead trout fishing in this state from the government of
7 the United States, or any of its departments or agencies, pursu-
8 ant to the anadromous fish conservation act, Public Law 89-304,
9 16 U.S.C. 757a to 757g, and may use this money in accordance with
10 the terms and provisions of that act. However, the acceptance
11 and use of federal funds does not commit state funds and does not
12 place an obligation upon the legislature to continue the purposes
13 for which the funds are made available.

14 (2) The department may lease lands owned or controlled by it
15 that have been designated for use for recreational purposes, but
16 only to responsible legal units, within this state, of national
17 or state recognized groups devoted principally to development of
18 character and citizenship training and physical fitness of youth,
19 the financial support of which is by voluntary public subscrip-
20 tions or contributions, and the property of which is exempt from
21 taxation under the laws of this state. The department may lease
22 land in the Porcupine mountain state park to third parties for
23 purposes as it considers desirable. Any lease entered into under
24 this subsection shall limit the purposes for which the leased
25 land is to be used and shall authorize the department to termi-
26 nate the lease upon a finding that the land is being used for
27 purposes other than those permitted in the lease.

1 Sec. 304. The commission shall promulgate rules for
2 protection of the lands and property under its control against
3 wrongful use or occupancy as will insure the carrying out of the
4 intent of this part to protect the lands and property from depre-
5 dations and to preserve the lands and property from molestation,
6 spoilation, destruction, or any other improper use or occupancy.
7 This section does not allow the commission to promulgate a rule
8 that applies to commercial fishing except as provided by law. A
9 violation of a rule promulgated under this section is a
10 misdemeanor.

11 Sec. 305. The commission or the department, in pursuing the
12 state's policy of propagating fish for the purpose of stocking
13 the streams and lakes of the state, shall accept federal fish
14 stock for such programs, and shall apply for all federal fish
15 stock programs that do not commit the state to future
16 expenditures. The department shall provide a listing to the leg-
17 islature of all federal fish stock programs by April 15 of each
18 year.

19 Sec. 306. (1) A writing prepared, owned, used, in the pos-
20 session of, or retained by the department or the commission in
21 the performance of an official function shall be made available
22 to the public in compliance with the freedom of information act,
23 Act No. 442 of the Public Acts of 1976, being sections 15.231 to
24 15.246 of the Michigan Compiled Laws.

25 (2) Before January 16 of each year in which a regular ses-
26 sion of the legislature is held, the director shall make a report
27 covering the operation of the department for the preceding

1 biennial period to the governor and the legislature. The report,
2 if ordered by the department of management and budget, shall be
3 printed and be distributed in the manner and to the persons,
4 organizations, institutions, and officials as the board directs.
5 The report shall be made available to the public as prescribed in
6 subsection (1).

7 Sec. 307. This part is declared to be immediately necessary
8 for the preservation of the public health, safety, welfare, and
9 the environment.

10 Sec. 308. The department may establish and collect fees and
11 rentals for any photographic or publication products or services
12 that the department provides. The fees and rentals shall be
13 credited to a separate fund of the state treasury and shall be
14 available for appropriation to the department and used to provide
15 the photographic or publication products or services. The fees
16 and rentals shall not exceed the material costs to the department
17 of providing the products or services. In addition, the expendi-
18 tures made in a fiscal year to provide the photographic and pub-
19 lication products or services shall not exceed the amount appro-
20 priated for that purpose for that fiscal year, plus any amounts
21 carried over from previous fiscal years, or the amount of fees
22 and rentals actually received during that fiscal year, plus any
23 amounts carried over from previous fiscal years, whichever is
24 less. Any unexpended fees and rentals collected pursuant to this
25 section, along with any excess collections from prior fiscal
26 years, shall be carried over into subsequent fiscal years and

1 shall be available for appropriation for the purposes described
2 in this section.

3 Sec. 309. (1) The commission may require that a person
4 obtain a permit for the use of a state park or a state forest
5 campground. The commission may establish and collect fees for
6 permits to use state parks, state forest campgrounds, and spe-
7 cific state forest areas. The revenue realized by the commission
8 from permit fees and concessions at state parks shall be credited
9 to a separate fund of the state treasury and shall be available
10 for appropriation to the department for improvement and mainte-
11 nance of state parks. The permit fees for state forest camp-
12 grounds shall be used for the operation, maintenance, and devel-
13 opment of state forest campgrounds. Any unexpended permit fees
14 for state forest campgrounds, along with any excess collections
15 from prior fiscal years, shall be carried over into subsequent
16 fiscal years and shall be available for appropriation for the
17 operation, maintenance, and development of state forest
18 campgrounds.

19 (2) The commission may establish and collect fees for the
20 processing of applications for the use of state forests that
21 require extensive review. The fees shall cover the cost to the
22 department of processing the applications.

23 Sec. 310. (1) Money received by the department for reim-
24 bursement of damages to department property, reimbursement of
25 land recording fees, sale of farm animals from Maybury state
26 park, reimbursement for utilities for the Michigan state
27 exposition and fairgrounds, reproduction of the agenda of the

1 commissions of the department, reimbursement for forest fire
2 protection services provided to the federal government or other
3 states, and money received from forfeited cash bonds, security
4 bonds, and court ordered reimbursements may be credited to the
5 accounts from which these disbursements were or are to be made.

6 (2) The department may establish and collect fees for use of
7 aircraft and pilots of the department. The aircraft fees col-
8 lected shall be credited to a separate fund of the state treasury
9 and shall be available for appropriation to the department and
10 used to pay all operating and maintenance costs of the aircraft,
11 including depreciation and aircraft replacement, but shall not
12 exceed the fee revenue collected for the fiscal year together
13 with any unexpended balances of prior years.

14 Sec. 311. The department may establish and collect fees for
15 the department magazine, publications, and related materials.
16 Fees collected shall be credited to a separate fund of the state
17 treasury and shall be available for appropriation to the depart-
18 ment and used to pay all direct and indirect operating costs of
19 the magazine and for the purchase of other related publications
20 and materials. The retained earnings balance of the magazine at
21 the end of the fiscal year shall not fall below the retained
22 earnings balance at the end of the prior fiscal year. Any unex-
23 pended fees collected pursuant to this section, along with any
24 excess collections from prior fiscal years, shall be carried over
25 into subsequent fiscal years and shall be available for appropri-
26 ation for the purposes described in this section. The magazine
27 account shall receive an annual allocation of interest earned by

1 the state treasurer's common cash fund on cash balances of the
2 magazine in accordance with procedures established by the state
3 treasurer. Accounting records of the magazine shall be main-
4 tained on an accrual basis in accordance with generally accepted
5 accounting principles, including the establishment of separate
6 asset, liability, and equity accounts for the magazine. On
7 March 1 of each year, the department shall report to the appro-
8 priations committees of the house of representatives and senate
9 and the house and senate fiscal agencies the status of the natu-
10 ral resources magazine program as of the end of the prior fiscal
11 year.

12 ARTICLE II POLLUTION CONTROL

13 PART 11 WATER RESOURCES PROTECTION

14 Sec. 1101. As used in this part:

15 (a) "Municipality" means the state, a county, city, village
16 or township, or an agency or instrumentality of any of these
17 entities.

18 (b) "Waters of the state" means groundwaters, lakes, rivers
19 and streams and all other watercourses and waters within the con-
20 fines of the state and also the Great Lakes bordering the state.

21 Sec. 1102. (1) For the purpose of carrying out this part a
22 water resources commission is created which shall consist of the
23 director, the director of the department of public health, the
24 director of the state transportation department, the director of
25 the department of agriculture, and 3 citizens of the state to be
26 appointed by the governor, by and with the advice and consent of
27 the senate, 1 from groups representative of industrial

1 management, 1 from groups representative of municipalities, and 1
2 from groups representative of conservation associations or inter-
3 ests, for terms of 3 years each. Vacancies shall be filled for
4 the unexpired term in the same manner as original appointments.
5 Members of the water resources commission shall be entitled to
6 actual and necessary expenses incurred in the performance of
7 official duties. The department of management and budget shall
8 provide suitable office facilities for the use of the water
9 resources commission.

10 (2) Each of the state officers who are members of the water
11 resources commission may designate a representative from his or
12 her department to serve in his or her stead as a member of the
13 water resources commission for 1 or more meetings.

14 Sec. 1103. (1) The water resources commission shall orga-
15 nize and make its own rules and procedure and shall meet not less
16 than once each month and shall keep a record of its proceedings.
17 The water resources commission shall protect and conserve the
18 water resources of the state and shall have control of the pollu-
19 tion of surface or underground waters of the state and the Great
20 Lakes, which are or may be affected by waste disposal of any
21 person. The water resources commission may make or cause to be
22 made surveys, studies, and investigations of the uses of waters
23 of the state, both surface and underground, and cooperate with
24 other governments, and governmental units and agencies in making
25 the surveys, studies, and investigations. The water resources
26 commission shall assist in an advisory capacity a flood control
27 district that may be authorized by the legislature. The water

1 resources commission, in the public interest, shall appear and
2 present evidence, reports, and other testimony during the hear-
3 ings involving the creation and organization of flood control
4 districts. The water resources commission shall advise and con-
5 sult with the legislature on the obligation of the state to par-
6 ticipate in the costs of construction and maintenance as provided
7 for in the official plans of a flood control district or inter-
8 county drainage district. The water resources commission shall
9 enforce this part and shall promulgate rules as it considered
10 necessary to carry out its duties under this part.

11 (2) The business which the water resources commission may
12 perform shall be conducted at a public meeting of the water
13 resources commission held in compliance with the open meetings
14 act, Act No. 267 of the Public Acts of 1976, being sections
15 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of
16 the time, date, and place of the meeting shall be given in the
17 manner required by Act No. 267 of the Public Acts of 1976.

18 (3) A writing prepared, owned, used, in the possession of,
19 or retained by the water resources commission in the performance
20 of an official function shall be made available to the public in
21 compliance with the freedom of information act, Act No. 442 of
22 the Public Acts of 1976, being sections 15.231 to 15.246 of the
23 Michigan Compiled Laws.

24 Sec. 1104. (1) The department is designated as the state
25 agency to cooperate and negotiate with other governments, govern-
26 mental units and governmental agencies in matters concerning the
27 water resources of the state, including, but not limited to,

1 flood control, beach erosion control and water quality control
2 planning, development, and management. The department shall have
3 control over the alterations of natural or present watercourses
4 of all rivers and streams in the state to assure that the chan-
5 nels and the portions of the floodplains that are the floodways
6 are not inhabited and are kept free and clear of interference or
7 obstruction which will cause any undue restriction of the capac-
8 ity of the floodway. The department may take such steps as may
9 be necessary to take advantage of any act of congress that may be
10 of assistance in carrying out the purposes of this part including
11 the water resources planning act, Public Law 89-80,
12 42 U.S.C. 1962 to 1962-1 and 1962a to 1962d-3 and the federal
13 water pollution control act, chapter 758, 86 Stat. 816,
14 33 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257, 1258 to 1263,
15 1265 to 1270, 1281, 1282 to 1293, 1294 to 1299, 1311 to 1313,
16 1314 to 1326, 1328 to 1330, 1341 to 1345, 1361 to 1377, and 1381
17 to 1387.

18 (2) The department shall report to the governor and to the
19 legislature at least once in each year any plans or projects
20 being implemented or considered for implementation. The report
21 shall include requests for any legislation needed to implement a
22 proposed plan, project, or agreement made necessary as a result
23 of a plan or project, together with any requests for
24 appropriations. The department may make recommendations to the
25 governor on the designation of areawide water quality planning
26 regions and organizations relative to the governor's
27 responsibilities under the federal water pollution control act.

1 Sec. 1105. The department or any agent appointed by the
2 department may enter at all reasonable times in or upon any pri-
3 vate or public property for the purpose of inspecting and inves-
4 tigating conditions relating to the pollution of any waters of
5 the state and the obstruction of the floodways of the rivers and
6 streams of this state. The department may call upon any officer,
7 board, department, school, university, or other state institution
8 and the officers or employees thereof for any assistance consid-
9 ered necessary to the carrying out of this part.

10 Sec. 1106. The water resources commission shall establish
11 pollution standards for lakes, rivers, streams, and other waters
12 of the state in relation to the public use to which they are or
13 may be put, as it considers necessary. The water resources com-
14 mission shall issue permits that will assure compliance with
15 state standards to regulate municipal, industrial, and commercial
16 discharges or storage of any substance which may affect the qual-
17 ity of the waters of the state. The water resources commission
18 may set permit restrictions which will assure compliance with
19 applicable federal law and regulations. The water resources com-
20 mission may ascertain and determine for record and in making its
21 order what volume of water actually flows in all streams, and the
22 high and low water marks of lakes and other waters of the state,
23 affected by the waste disposal or pollution of any persons. The
24 water resources commission may promulgate rules and issue orders
25 restricting the polluting content of any waste material or pol-
26 luting substance discharged or sought to be discharged into any
27 lake, river, stream, or other waters of the state. The water

1 resources commission shall take all appropriate steps to prevent
2 any pollution the water resources commission considers to be
3 unreasonable and against public interest in view of the existing
4 conditions in any lake, river, stream, or other waters of the
5 state.

6 Sec. 1107. The department may promulgate rules and issue
7 orders for the prevention of harmful interference with the dis-
8 charge and stage characteristics of streams. The department may
9 ascertain and determine for record and in making its order the
10 location and extent of floodplains, stream beds, and channels and
11 the discharge and stage characteristics of streams at various
12 times and circumstances.

13 Sec. 1108. A person shall not occupy or permit the occupa-
14 tion of land for residential, commercial, or industrial purposes
15 or fill or grade or permit the filling or grading for any pur-
16 poses other than agricultural, of land in the floodplains, stream
17 bed, or channel of any stream, as ascertained and determined for
18 record by the department, or undertake or engage in any activity
19 on or with respect to land that is determined by the department
20 to harmfully interfere with the discharge or stage characteris-
21 tics of a stream, unless the occupation, filling, grading or
22 other activity is permitted by an order or rule of the department
23 or by a valid permit issued by the department under the law.

24 Sec. 1109. (1) A person shall not directly or indirectly
25 discharge into the waters of the state a substance that is or may
26 become injurious to any of the following:

1 (a) To the public health, safety, or welfare.

2 (b) To domestic, commercial, industrial, agricultural,
3 recreational, or other uses that are being or may be made of such
4 waters.

5 (c) To the value or utility of riparian lands.

6 (d) To livestock, wild animals, game birds, fish, aquatic
7 life, or plants or the growth or propagation of any of these life
8 forms.

9 (2) The discharge of any raw sewage of human origin,
10 directly or indirectly into any of the waters of the state shall
11 be considered prima facie evidence of a violation of this part by
12 the municipality in which the discharge originated unless the
13 discharge is permitted by an order or rule of the water resources
14 commission. If the discharge is not the subject of a valid
15 permit issued by the water resources commission, a municipality
16 responsible for the discharge may be subject to the remedies pro-
17 vided in section 1115. If the discharge is the subject of a
18 valid permit issued by the water resources commission pursuant to
19 section 1112, and is in violation of that permit, a municipality
20 responsible for the discharge is subject to the penalties pre-
21 scribed in section 1115.

22 (3) Unless authorized by permit, order, or rule of the water
23 resources commission or the department, the discharge into the
24 waters of this state of any medical waste, as defined in part 138
25 of the public health code, Act No. 368 of the Public Acts of
26 1978, being sections 333.13801 to 333.13831 of the Michigan
27 Compiled Laws, is prima facie evidence of a violation of this

1 part and subjects the responsible person to the penalties
2 prescribed in section 1115.

3 (4) A violation of this section is prima facie evidence of
4 the existence of a public nuisance and in addition to the reme-
5 dies provided for in this part may be abated according to law in
6 an action brought by the attorney general in a court of competent
7 jurisdiction.

8 Sec. 1110. (1) Each industrial or commercial entity that
9 discharges liquid wastes into any surface water or groundwater or
10 underground or on the ground other than through a public sanitary
11 sewer shall have waste treatment or control facilities under the
12 specific supervision and control of persons who have been certi-
13 fied by the department as properly qualified to operate the
14 facilities. The department shall examine all supervisory person-
15 nel having supervision and control of the facilities and certify
16 that the persons are properly qualified to operate or supervise
17 the facilities.

18 (2) The department may conduct a program for training per-
19 sons seeking to be certified as operators or supervisors under
20 subsection (1) or seeking to be certified as operators or super-
21 visors of municipal wastewater treatment facilities. The depart-
22 ment, with the annual approval of the water resources commission,
23 may charge a fee based on the costs to the department of operat-
24 ing the training program. The fees shall be deposited in the
25 state treasury and credited to a separate fund and used to con-
26 duct the training program. Any unexpended fees collected
27 pursuant to this subsection, along with any excess collections

1 from prior fiscal years, shall be carried over into subsequent
2 fiscal years and shall be available for appropriation for the
3 purposes of conducting the program described in this subsection.

4 (3) A person certified as required by subsection (1) shall
5 file monthly, or at such longer intervals as the water resources
6 commission may designate, on forms provided by the water
7 resources commission, reports showing the effectiveness of the
8 treatment or control facility operation and the quantity and
9 quality of discharged liquid wastes. A person who knowingly
10 makes a false statement in a report may have his or her certifi-
11 cate as an approved treatment facility operator revoked.

12 (4) This section does not apply to water, gas, or other
13 material that is injected into a well to facilitate production of
14 oil or gas, or water derived in association with oil or gas pro-
15 duction and disposed of in a well, if the well is used either to
16 facilitate production or for disposal purposes and is under
17 permit by the state supervisor of wells.

18 Sec. 1111. A person doing business within this state who
19 discharges wastewater to the waters of the state or to any sewer
20 system, which contains wastes in addition to sanitary sewage
21 shall file annually reports on forms provided by the department
22 setting forth the nature of the enterprise, indicating the quan-
23 tities of materials used in and incidental to its manufacturing
24 processes and including by-products and waste products that
25 appear on a register of critical materials as compiled by the
26 department with the advice of an advisory committee of
27 environmental specialists designated by the department, and the

1 estimated annual total number of gallons of wastewater,
2 including, but not limited to, process and cooling water to be
3 discharged to the waters of the state or to any sewer system.
4 The information shall be used by the department only for purposes
5 of water pollution control. The department shall provide proper
6 and adequate facilities and procedures to safeguard the confiden-
7 tiality of manufacturing proprietary processes except that confi-
8 dentiality shall not extend to waste products discharged to the
9 waters of the state. Operations of a business or industry that
10 violate this section may be enjoined by an action commenced by
11 the attorney general, in a court of competent jurisdiction. The
12 department shall promulgate rules as it considers necessary to
13 effectuate the administration of this section, including where
14 necessary to meet special circumstances, reporting more fre-
15 quently than annually.

16 Sec. 1112. (1) A person shall not discharge any waste or
17 waste effluent into the waters of this state unless the person is
18 in possession of a valid permit from the water resources
19 commission. Compliance with the terms of an outstanding order of
20 determination or final order of determination or stipulation with
21 the water resources commission that is in effect on April 15,
22 1973, shall be considered to meet the requirements of this sec-
23 tion until the water resources commission issues its permit. The
24 water resources commission shall condition the continued validity
25 of a permit upon the permittee's meeting the effluent require-
26 ments that the water resources commission considers necessary to
27 prevent unlawful pollution by such dates that the water resources

1 commission considers to be reasonable and necessary and to assure
2 compliance with applicable federal law and regulations. If the
3 water resources commission finds that the terms of a permit have
4 been, are being, or may be violated, it may modify, suspend, or
5 revoke the permit or grant the permittee a reasonable period of
6 time in which to comply with the permit. The water resources
7 commission may reissue a revoked permit upon a showing satisfac-
8 tory to the water resources commission that the permittee has
9 corrected the violation. A person who has had a permit revoked
10 may apply for a new permit.

11 (2) If the department determines that a person is causing or
12 is about to cause unlawful pollution of the waters of this state,
13 the department may notify the alleged offender of its determina-
14 tion and enter an order requiring the person to abate the pollu-
15 tion or refer the matter to the attorney general for legal
16 action, or both.

17 (3) A person who is aggrieved by an order of abatement of
18 the department or by the reissuance, modification, suspension, or
19 revocation of an existing permit of the water resources commis-
20 sion executed pursuant to section 1112 may file a sworn petition
21 with the department or the water resources commission, as appro-
22 priate, setting forth the grounds and reasons for the complaint
23 and asking for a contested case hearing on the matter pursuant to
24 the administrative procedures act of 1969, Act No. 306 of the
25 Public Acts of 1969, being sections 24.201 to 24.328 of the
26 Michigan Compiled Laws. A petition filed more than 60 days after

1 action on the order or permit may be rejected by the department
2 or the water resources commission as being untimely.

3 Sec. 1113. (1) A person who seeks a new or increased use of
4 the waters of the state for sewage or other waste disposal pur-
5 poses shall file with the water resources commission an applica-
6 tion setting forth the information required by the water
7 resources commission, including the nature of the enterprise or
8 development contemplated, the amount of water required to be
9 used, its source, the proposed point of discharge of the wastes
10 into the waters of the state, the estimated amount to be dis-
11 charged, and a statement setting forth the expected bacterial,
12 physical, chemical, and other known characteristics of the
13 wastes.

14 (2) Within 180 days after receipt of a complete application,
15 the water resources commission shall either grant or deny a
16 permit, unless the applicant and the water resources commission
17 agree to extend this time period. If granted, the water
18 resources commission shall condition the permit upon such
19 restrictions that the water resources commission considers to be
20 necessary to adequately guard against unlawful uses of the waters
21 of the state as are set forth in section 1109.

22 (3) If the permit or denial of a new or increased use is not
23 acceptable to the permittee, the applicant or any other person,
24 the permittee, the applicant, or other person may file a sworn
25 petition with the water resources commission setting forth the
26 grounds and reasons for the complaint and asking for a contested
27 case hearing on the matter pursuant to the administrative

1 procedures act of 1969, Act No. 306 of the Public Acts of 1969,
2 being sections 24.201 to 24.328 of the Michigan Compiled Laws. A
3 petition filed more than 60 days after action on the permit
4 application may be rejected by the water resources commission as
5 being untimely.

6 Sec. 1114. An employee of the department or an employee of
7 another governmental agency appointed by the department may, with
8 the concurrence of the department, enforce this part and may make
9 a criminal complaint against a person who violates this part.

10 Sec. 1115. (1) The department or the water resources com-
11 mission may request the attorney general to commence a civil
12 action for appropriate relief, including a permanent or temporary
13 injunction, for a violation of this part or a provision of a
14 permit, order, rule, or stipulation of the department or the
15 water resources commission. An action under this subsection may
16 be brought in the circuit court for the county of Ingham or for
17 the county in which the defendant is located, resides, or is
18 doing business. The court has jurisdiction to restrain the vio-
19 lation and to require compliance. In addition to any other
20 relief granted under this subsection, the court shall impose a
21 civil fine of not less than \$2,500.00 and may award reasonable
22 attorney fees and costs to the prevailing party. However, the
23 maximum fine imposed by the court shall be not more than
24 \$25,000.00 per day of violation.

25 (2) A person who at the time of the violation, knew or
26 should have known that he or she discharged a substance contrary
27 to this part, or contrary to a permit, order, rule, or

1 stipulation of the department or the water resources commission,
2 or who intentionally makes a false statement, representation, or
3 certification in an application for, or form pertaining to a
4 permit, or in a notice or report required by the terms and condi-
5 tions of an issued permit, or who intentionally renders inaccu-
6 rate a monitoring device or record required to be maintained by
7 the water resources commission, is guilty of a felony, and shall
8 be fined not less than \$2,500.00 or more than \$25,000.00 for each
9 violation. The court may impose an additional fine of not more
10 than \$25,000.00 for each day during which the unlawful discharge
11 occurred. If the conviction is for a violation committed after a
12 first conviction of the person under this subsection, the court
13 shall impose a fine of not less than \$25,000.00 per day and not
14 more than \$50,000.00 per day of violation. Upon conviction, in
15 addition to a fine, the court in its discretion may sentence the
16 defendant to imprisonment for not more than 2 years or impose
17 probation upon a person for a violation of this part. With the
18 exception of the issuance of criminal complaints, issuance of
19 warrants, and the holding of an arraignment, the circuit court
20 for the county in which the violation occurred has exclusive
21 jurisdiction. However, the person shall not be subject to the
22 penalties of this subsection if the discharge of the effluent is
23 in conformance with and obedient to a rule, order, or permit of
24 the water resources commission. In addition to a fine, the
25 attorney general may file a civil suit in a court of competent
26 jurisdiction to recover the full value of the injuries done to

1 the natural resources of the state and the costs of surveillance
2 and enforcement by the state resulting from the violation.

3 (3) Upon a finding by the court that the actions of a civil
4 defendant pose or posed a substantial endangerment to public
5 health, safety, or welfare, the court shall impose, in addition
6 to the penalties set forth in subsection (1), a fine of not less
7 than \$500,000.00 and not more than \$5,000,000.00.

8 (4) Upon a finding by the court that the action of a crimi-
9 nal defendant pose or posed a substantial endangerment to public
10 health, safety, or welfare, the court shall impose, in addition
11 to the penalties set forth in subsection (2), a fine of not less
12 than \$1,000,000.00 and, in addition to a fine, a sentence of
13 5 years' imprisonment.

14 (5) To find a defendant civilly or criminally liable for
15 substantial endangerment under subsections (3) and (4), the court
16 shall determine that the defendant knowingly or recklessly acted
17 in such a manner as to cause a danger of death or serious bodily
18 injury and that either of the following has occurred:

19 (a) The defendant had an actual awareness, or belief, or
20 understanding, that his or her conduct would cause a substantial
21 danger of death or serious bodily injury.

22 (b) The defendant acted in gross disregard of the standard
23 of care which any reasonable person should observe in similar
24 circumstances.

25 (6) Knowledge possessed by a person other than the defendant
26 under subsection (5) may be attributable to the defendant if the

1 defendant took affirmative steps to shield himself or herself
2 from the relevant information.

3 (7) Any fine or other award ordered paid pursuant to this
4 section shall do both of the following:

5 (a) Be payable to the state of Michigan and credited to the
6 general fund.

7 (b) Constitute a lien on any property, of any nature or
8 kind, owned by the defendant.

9 (8) A lien under subsection (7)(b) shall take effect and
10 have priority over all other liens and encumbrances except those
11 filed or recorded prior to the date of judgment only if notice of
12 the lien is filed or recorded as required by state or federal
13 law.

14 (9) A lien filed or recorded pursuant to subsection (8)
15 shall be terminated according to the procedures required by state
16 or federal law within 14 days after the fine or other award
17 ordered to be paid is paid.

18 (10) In addition to any other method of collection, any fine
19 or other award ordered paid may be recovered by right of setoff
20 to any debt owed to the defendant by the state of Michigan,
21 including the right to a refund of income taxes paid.

22 Sec. 1116. This part does not repeal any law governing the
23 pollution of lakes and streams, but shall be held and construed
24 as ancillary to and supplementing the other laws and in addition
25 to the laws now in force, except as a law may be in direct con-
26 flict with this part. This part does not apply to a copper or
27 iron mining operation, if the operation results in the placement,

1 removal, use, or processing of copper or iron mineral tailings or
2 copper or iron mineral deposits from the operation being placed
3 in inland waters on bottom lands owned by or under the control of
4 the mining company and only water that may contain a minimal
5 amount of residue as determined by the water resources commission
6 resulting from the placement, removal, use or processing being
7 allowed or permitted to escape into public waters. This part
8 does not apply to the discharge of water from underground iron or
9 copper mining operations subject to a determination by the water
10 resources commission.

11 Sec. 1117. This part is supplemental to and in addition to
12 the drain code of 1956, Act No. 40 of the Public Acts of 1956,
13 being sections 280.1 to 280.630 of the Michigan Compiled Laws.
14 This part does not amend or repeal any law of the state relating
15 to the public service commission, the department, and the depart-
16 ment of public health relating to waters and water structures, or
17 any act or parts of acts not inconsistent with this part.

18 PART 13 DRINKING WATER

19 Sec. 1301. As used in this part:

20 (a) "Bottled drinking water" means water that is ultimately
21 sold, provided, or offered for human consumption in a closed
22 container.

23 (b) "Contaminant" means a physical, chemical, biological, or
24 radiological substance or matter in water.

25 (c) "Department" means the department of public health or
26 its authorized agent or representative.

1 (d) "Director" means the director of public health or his
2 authorized agent or representative.

3 (e) "Imminent hazard" means that in the judgment of the
4 director there is a violation, or a condition that may cause a
5 violation, of the state drinking water standards at a public
6 water supply requiring immediate action to prevent endangering
7 the health of people.

8 (f) "Living unit" means a house, apartment, or other domi-
9 cile occupied or intended to be occupied on a day to day basis by
10 an individual, family group, or equivalent.

11 (g) "Plans and specifications" means drawings, data, and a
12 true description or representation of an entire waterworks system
13 or parts of a waterworks system as it exists or is to be con-
14 structed, and a statement on how a waterworks system is to be
15 operated.

16 (h) "Political subdivision" means a city, village, township,
17 charter township, county, district, authority or portion or com-
18 bination of any of these entities.

19 (i) "Public water supply" means a waterworks system that
20 provides water for drinking or household purposes to persons
21 other than the supplier of the water, except those waterworks
22 systems that supply water to only 1 living unit. Those water-
23 works systems serving 2 to 14 living units shall be subject to
24 only those provisions of this part necessary to assure proper
25 construction and operations so that the quality of water distrib-
26 uted meets the state drinking water standards. Sections 1304 and

1 1310 do not apply to waterworks systems serving 2 to 14 living
2 units.

3 (j) "State drinking water standards" means quality standards
4 setting limits for contaminant levels or establishing treatment
5 techniques to meet standards necessary to protect the public
6 health.

7 (k) "Supplier of water" or "supplier" means a person who
8 owns or operates a public water supply, and includes a water
9 hauler.

10 (l) "Water hauler" means a person engaged in bulk vehicular
11 transportation of water to other than the water hauler's own
12 household that is intended for use or used for drinking or house-
13 hold purposes. Water hauler does not include a person who pro-
14 vides water solely for employee use.

15 (m) "Waterworks system" or "system" means a system of pipes
16 and structures through which water is obtained and distributed,
17 including, but not limited, to wells and well structures, intakes
18 and cribs, pumping stations, treatment plants, storage tanks,
19 pipelines and appurtenances, or a combination thereof, actually
20 used or intended for use for the purpose of furnishing water for
21 drinking or household purposes.

22 Sec. 1302. Subject to limitations contained in this part,
23 the department shall have power and control over public water
24 supplies and suppliers of water. The director may enter upon the
25 waterworks system of a supplier of water at reasonable times for
26 the purpose of inspecting the system and carrying out this part
27 and rules promulgated under this part.

1 Sec. 1303. (1) An agricultural employer using a well to
2 provide water for employee use is exempt from any well inspection
3 fees that may be or are imposed under this part or rules promul-
4 gated under this part.

5 (2) As used in this section:

6 (a) "Agricultural employer" means a person who employs 1 or
7 more persons in hand labor operations for the production of food,
8 fiber, or other agricultural products including seed, seedlings,
9 plants, or parts of plants.

10 (b) "Hand labor operations" means agricultural activities
11 performed by hand or with hand tools and includes the cultivat-
12 ing, weeding, planting, and harvesting of vegetables, nuts,
13 fruits, seedlings, and other crops, including mushrooms; packing
14 produce by hand into containers, whether done on the ground, on a
15 moving machine, or in a temporary packing shed located in a
16 field; and operations performed in conjunction with hand labor
17 operations. Hand labor operations does not include logging oper-
18 ations, the care or feeding of livestock, or activities conducted
19 in permanent structures, including canning facilities or packing
20 houses.

21 Sec. 1304. (1) A supplier of water shall file with the
22 department the plans and specifications of the entire waterworks
23 system owned or operated by the supplier, unless the department
24 determines that its existing records are adequate. A general
25 plan of the waterworks system for each public water supply shall
26 be provided to the department by a supplier of water and shall be
27 updated as determined necessary by the department.

1 (2) Upon receipt of the plans and specifications for a
2 proposed waterworks system, the department shall evaluate the
3 adequacy of the proposed system to protect the public health by
4 supplying water meeting the state drinking water standards. If
5 upon evaluation the department determines the plans and specifi-
6 cations to be inadequate, the department may return the plans and
7 specifications to the applicant and require additions or modifi-
8 cations as may be appropriate. The department may reject plans
9 and specifications for a waterworks system that it determines
10 will not satisfactorily provide for the protection of the public
11 health.

12 (3) Before commencing the construction of a waterworks
13 system or an alteration, addition, or improvement to a system, a
14 supplier of water shall submit the plans and specifications for
15 the improvements to the department and secure from the department
16 a permit for construction of the same as provided by rule. Plans
17 and specifications submitted to the department shall be prepared
18 by a licensed professional engineer. A contractor, builder, or
19 supplier of water shall not engage in or begin the construction
20 of a waterworks system or an alteration, addition, or improvement
21 to a waterworks system until a valid permit for the construction
22 has been secured from the department. A contractor, builder, or
23 supplier of water who permits or allows construction to proceed
24 without a valid permit, or in a manner not in accordance with the
25 plans and specifications approved by the department, violates
26 this part. A supplier of water shall not issue a voucher, check,
27 or in any other way expend money or provide consideration for

1 construction of a waterworks system unless a valid permit issued
2 by the department is in effect.

3 Sec. 1305. (1) The department shall promulgate and enforce
4 rules to carry out this part. The rules, as a minimum, shall
5 include the following:

6 (a) Requirements for the submission of reports, plans, and
7 specifications for the design and construction of a waterworks
8 system or a part of a waterworks system, and a plan for operating
9 and maintaining all or a part of the waterworks system, including
10 the protection of water quality within the distribution system as
11 necessary to protect the public health.

12 (b) State drinking water standards and associated monitoring
13 requirements, the attainment and maintenance of which are neces-
14 sary to protect the public health.

15 (c) The classification of waterworks systems or portions of
16 waterworks systems, the examination for certification of the
17 operators of those systems including shift operators of water
18 treatment systems, and for the issuance, suspension, and revoca-
19 tion of certificates.

20 (2) Rules governing public water supplies that were promul-
21 gated by authority granted the director under former Act No. 98
22 of the Public Acts of 1913, and which were in effect on
23 January 4, 1977 are continued in accordance with section 31 of
24 the administrative procedures act of 1969, Act No. 306 of the
25 Public Acts of 1969, being section 24.231 of the Michigan
26 Compiled Laws, and may be amended or rescinded by the director
27 under this part.

1 (3) A rule promulgated under this part shall not require the
2 addition of any substance for preventive health care purposes
3 unrelated to contamination of drinking water.

4 Sec. 1306. The maximum contaminant levels for inorganic and
5 organic chemicals, microbiological contaminants and turbidity,
6 which are part of the national interim primary drinking water
7 regulations, and which have been promulgated by the United States
8 environmental protection agency under authority of title XIV of
9 the public health service act, chapter 373, 88 Stat. 1660, before
10 January 4, 1977, are incorporated by reference and shall have the
11 same force and effect as a rule promulgated under this part. A
12 standard that is incorporated by reference pursuant to this sub-
13 section shall remain effective until a rule is promulgated under
14 this part covers the same or similar subject or the standard is
15 rescinded by a rule promulgated under this part.

16 Sec. 1307. A supplier of water shall collect water samples
17 or have them collected on a schedule at least equal to that out-
18 lined in the rules promulgated under this part, shall cause those
19 samples to be analyzed in a laboratory approved by the department
20 or by the United States environmental protection agency for con-
21 taminants listed in the state drinking water standards, and shall
22 report the results of the analyses to the department in a timely
23 manner as specified by rule. If a supplier fails to meet this
24 responsibility, the department shall collect the water samples
25 routinely as specified by rule, analyze the samples at the
26 department's laboratory, and charge the supplier for these
27 services according to a schedule of fees established by the

1 department by rule. The fees for performing the services shall
2 bear a reasonable relation to the cost to the department for col-
3 lecting the water samples, analyzing the samples, and reporting
4 the results of the analyses to the supplier of water. The fees
5 shall be deposited in the state treasury to the credit of the
6 general fund.

7 Sec. 1308. The department shall give due consideration to
8 the size, type, location, and other conditions at public water
9 supplies for the purpose of specifying design and operation
10 standards.

11 Sec. 1309. (1) The department shall classify water treat-
12 ment and distribution systems with regard to size, type, loca-
13 tion, and other physical conditions for the purpose of establish-
14 ing the skill, knowledge, and experience that individuals need to
15 maintain and operate the systems effectively.

16 (2) The director shall appoint an advisory board of examin-
17 ers which shall assist the department in the examination of indi-
18 viduals as to their competency to operate water treatment systems
19 and water distribution systems. The advisory board shall make
20 recommendations to the department relative to the certification
21 of those individuals.

22 (3) The membership of the advisory board shall consist of 2
23 certified water treatment operators, 2 certified water distribu-
24 tion operators, 1 superintendent or manager of a supplier of
25 water, 1 representative of the administrative branch of a local
26 governmental agency, 2 members of the public at large, and 1
27 professor of sanitary or environmental engineering at a

1 university in the state. A representative of the department
2 shall be the nonvoting secretary for the board.

3 (4) For individuals meeting the requirements, the department
4 shall issue certificates acknowledging their competency to oper-
5 ate a specified class of waterworks system or portion of water-
6 works systems. The department may suspend or revoke a certifi-
7 cate as specified by rule.

8 (5) A water treatment and distribution system shall be under
9 the supervision of a properly certified operator as specified in
10 rules promulgated under this part.

11 (6) Those individuals now certified to operate water treat-
12 ment systems under the existing mandatory certification rules
13 being R 325.11901 of the Michigan administrative code, and those
14 meeting the requirements of the voluntary distribution system
15 operator certification program administered by the department,
16 shall be considered to meet the requirements of this section and
17 shall be issued a certificate in an appropriate class in accord-
18 ance with the certifications system established under this act.

19 (7) Those individuals who are superintendents of distribu-
20 tion systems meet the requirements of this section only for the
21 waterworks system by which they were employed on January 4, 1977,
22 and shall be issued a certificate for continuing operation of
23 that distribution system upon receipt by the department of a com-
24 pleted application by January 4, 1978.

25 Sec. 1310. (1) Beginning January 4, 1978, approval of the
26 department shall not be granted to a privately owned public water
27 supply which serves a group of living units, unless by resolution

1 of its governing body the municipality in which the water supply
2 is to be located refuses to accept ownership and operational
3 responsibility of the public water supply.

4 (2) If a local governmental agency does not accept ownership
5 and operational responsibility of a public water supply that
6 serves a group of living units, the department may issue a con-
7 struction permit or other approval for an acceptable project
8 requiring as a condition of the permit an appropriate amount, but
9 not more than \$50,000.00, based on the size, type, and complexity
10 of the waterworks system, to be placed in escrow by the developer
11 or private owner. The department may remove funds from this
12 escrow account to cause deficiencies to be corrected if the
13 public water supply is not operated, maintained, and expanded as
14 necessary to protect the public health. If it is necessary for
15 the department to withdraw funds from an escrow account, the
16 funds shall be replaced within 90 days by the developer, private
17 owner, or organization then responsible for the public water
18 supply.

19 Sec. 1311. The department shall review and certify labora-
20 tories used or intended for use in the testing of water from
21 public water supplies.

22 Sec. 1312. The department shall maintain a laboratory capa-
23 bility to test for those contaminants in water that are included
24 in the state drinking water standards and any other contaminant
25 that may be of concern to the director.

26 Sec. 1313. (1) All chemicals and materials that may come in
27 contact with the water or be used in treatment processes shall be

1 approved by the department before being utilized in a public
2 water supply. A list of approved chemicals and materials shall
3 be published by the department.

4 (2) A person shall not willfully introduce or permit the
5 introduction of a chemical or material into a public water supply
6 that has not first been approved by the department.

7 Sec. 1314. A supplier of water shall file with the depart-
8 ment reports and shall maintain records as the department may
9 require by rule.

10 Sec. 1315. (1) When the department considers it necessary
11 for protection of the public health, the department shall notify
12 a supplier of water of the need to make changes in operations, to
13 provide treatment, to make structural changes in existing sys-
14 tems, or to add additional capacity as necessary to produce and
15 distribute an adequate quantity of water meeting the state drink-
16 ing water standards.

17 (2) The department shall inspect a waterworks system or a
18 part of a waterworks system, and the manner of operation of the
19 system or part. If upon inspection the department determines the
20 waterworks system to be inadequate or operated in a manner that
21 does not adequately protect the public health, the department may
22 order the supplier of water to make alterations in the waterworks
23 system or its method of operation as may be required or consid-
24 ered advisable by the department to assure the public water
25 supply shall be adequate, healthful, and in conformance with
26 state drinking water standards. If the supplier does not request
27 a public hearing within 30 days after receipt of the order, the

1 order shall be final and binding on the supplier of water. If
2 the department receives a request for a public hearing within the
3 specified 30 days, the public hearing shall be immediately
4 arranged. A supplier of water shall comply with a final order of
5 the department.

6 (3) If a public water supply poses an imminent hazard to the
7 public health, the department may issue an emergency order imme-
8 diately, without notice or hearing, requiring such action as the
9 department determines is necessary to protect the public health.
10 Administrative procedures as required by the administrative pro-
11 cedures act of 1969, Act No. 306 of the Public Acts of 1969,
12 being sections 24.201 to 24.328 of the Michigan Compiled Laws,
13 shall proceed concurrently with an emergency order upon written
14 request of the supplier of water received within 15 days. An
15 emergency order shall be effective immediately and binding until
16 modified or rescinded by the department or a court of competent
17 jurisdiction.

18 (4) The department may take appropriate action to limit
19 water use from a public water supply until such time as satisfac-
20 tory improvements are made in the system or operation to provide
21 for a continuous, adequate supply of water meeting the state
22 drinking water standards.

23 Sec. 1316. The department may enter into agreements, con-
24 tracts, or cooperative arrangements under terms and conditions
25 appropriate with other state agencies, federal agencies, inter-
26 state agencies, political subdivisions, educational institutions,
27 local health departments, or other organizations or individuals

1 for the purpose of administering this part. The department may
2 solicit and receive grants of money or other aid from federal and
3 other public or private agencies or individuals for the adminis-
4 tration of this part or a portion of this part, to conduct
5 research and training activities or cause them to be conducted,
6 to cause waterworks systems or portions of waterworks systems to
7 be constructed, or for other program purposes.

8 Sec. 1317. (1) Suppliers of water providing bottled drink-
9 ing water shall utilize a water source meeting the requirements
10 of this part. Bottling or packaging facilities and their opera-
11 tion shall remain under the supervision of the department of
12 agriculture as provided for in the Michigan food law of 1968, Act
13 No. 39 of the Public Acts of 1968, being sections 289.701 to
14 289.727 of the Michigan Compiled Laws and regulation no. 549,
15 being sections R 285.549.1 through R 285.549.29 of the Michigan
16 administrative code, and other pertinent rules and laws.

17 (2) Suppliers of water providing bottled water from out of
18 state shall submit proof to the director that the source and bot-
19 tling facilities were approved by the state agency having
20 jurisdiction. The director shall determine the acceptability of
21 another state's inspection, surveillance, and approval procedures
22 and techniques.

23 Sec. 1318. Water haulers shall obtain an annual license
24 from the department for their containers, equipment, and
25 operation. The source of water shall be acceptable to the
26 department and the water quality shall meet the state drinking
27 water standards.

1 Sec. 1319. (1) If water delivered by or the operation of a
2 public water supply is found not to be in compliance with the
3 state drinking water standards, the department shall require the
4 supplier of water to notify its users of the extent and nature of
5 the noncompliance. Notification of users shall be in a form and
6 manner prescribed or otherwise approved by the department.

7 (2) Notification received pursuant to this section or infor-
8 mation obtained from the notification may not be used against a
9 person in litigation, except a prosecution for perjury or for
10 giving a false statement.

11 Sec. 1320. The department may authorize variances or exemp-
12 tions from the state drinking water standards in accordance with
13 Public Law 93-523 (1974) and the federal rules and regulations.

14 Sec. 1321. A person who violates this part or a rule
15 promulgated under this part or an order issued pursuant to this
16 part is guilty of a misdemeanor, and shall be punished by impris-
17 onment for not more than 1 year or a fine of not more than
18 \$5,000.00 for each day of violation, or both.

19 Sec. 1322. At the request of the department, the attorney
20 general may bring an injunctive action or other appropriate
21 action in the name of the people of the state to enforce this
22 part, rules promulgated under this part, or an order issued pur-
23 suant to this part or the rules promulgated under this part. In
24 addition to other relief granted under this section, the court
25 may impose a civil fine of not more than \$5,000.00 for each day
26 of violation.

PART 15 STATE CLEAN WATER ASSISTANCE

Sec. 1501. As used in this part:

(a) "Assistance" means 1 or more of the following activities to the extent authorized by the federal water pollution control act:

(i) Provision of loans to municipalities for construction of sewage treatment works or nonpoint source projects.

(ii) Project refinancing assistance.

(iii) The guarantee or purchase of insurance for local obligations, if the guarantee or purchase action would improve credit market access or reduce interest rates.

(iv) Use of the proceeds of the fund as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by this state, if the proceeds of the sale of the bonds will be deposited into the fund.

(v) Provision of loan guarantees for similar revolving funds established by municipalities.

(vi) The use of deposited funds to earn interest on fund accounts.

(vii) Provision for reasonable costs of administering and conducting activities under title VI of the federal water pollution control act, chapter 758, 101 Stat. 21, 33 U.S.C. 1381 to 1387.

(b) "Authority" means the Michigan municipal bond authority created in the shared credit rating act, Act No. 227 of the Public Acts of 1985, being sections 141.1051 to 141.1078 of the Michigan Compiled Laws.

1 (c) "Capitalization grant" means the federal grant made to
2 this state by the EPA for the purpose of establishing a state
3 water pollution control revolving fund, as provided in title VI
4 of the federal water pollution control act.

5 (d) "Construction activities" means any actions undertaken
6 in the designing or building of sewage treatment works or non-
7 point source projects. The term includes, but is not limited to,
8 all of the following:

9 (i) Engineering services.

10 (ii) Legal services.

11 (iii) Financial services.

12 (iv) Design of plans and specifications.

13 (v) Acquisition of land or structural components, or both.

14 (vi) Building, erection, alteration, remodeling, or exten-
15 sions of a sewage treatment works.

16 (vii) Building, erection, alteration, remodeling, or exten-
17 sions of projects designed to control nonpoint source pollution,
18 consistent with section 319 of title III of the federal water
19 pollution control act, chapter 758, 101 Stat. 52, 33
20 U.S.C. 1329.

21 (viii) Municipal supervision of the project activities
22 described in subdivisions (i) to (vii).

23 (e) "EPA" means the federal environmental protection
24 agency.

25 (f) "Federal water pollution control act" means chapter 758,
26 86 Stat. 816, 33 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257,
27 1258 to 1263, 1265 to 1270, 1281, 1282 to 1293, 1294 to 1299,

1 1311 to 1313, 1314 to 1326, 1328 to 1330, 1341 to 1345, 1361 to
2 1377, and 1381 to 1387.

3 (g) "Fund" means the state water pollution control revolving
4 fund created in the shared credit rating act, Act No. 227 of the
5 Public Acts of 1985, being sections 141.1051 to 141.1078 of the
6 Michigan Compiled Laws, established pursuant to title VI of the
7 federal water pollution control act.

8 (h) "Fundable range" means those projects, taken in descend-
9 ing order on the priority lists, for which sufficient funds are
10 estimated by the director to exist to provide assistance at the
11 beginning of each annual funding cycle.

12 (i) "Municipality" means a city, village, county, township,
13 authority, or other public body, including an intermunicipal
14 agency of 2 or more municipalities, authorized or created under
15 state law; or an Indian tribe that has jurisdiction over con-
16 struction and operation of sewage treatment works or other
17 projects qualifying under section 319 of title III of the federal
18 water pollution control act.

19 (j) "Nonpoint source project" means construction activities
20 designed to reduce nonpoint source pollution consistent with the
21 state nonpoint source management plan pursuant to section 319 of
22 title III of the federal water pollution control act.

23 (k) "Project" means a sewage treatment works project or a
24 nonpoint source project, or both.

25 (l) "Project refinancing assistance" means buying or refi-
26 nancing the debt obligations of municipalities within the state

1 if construction activities commenced after March 7, 1985 and the
2 debt obligation was incurred after March 7, 1985.

3 (m) "Priority list" means the annual ranked listing of
4 projects developed by the director in section 1503 or used by the
5 director pursuant to section 1515.

6 (n) "Sewage treatment works project" means construction
7 activities on any device or system for the treatment, storage,
8 collection, conveyance, recycling, or reclamation of the sewage
9 of a municipality, including combined sewer overflow correction
10 and major rehabilitation of sewers.

11 (o) "Tier I project" means a project for which assistance is
12 sought or provided from funds made directly available from the
13 federal capitalization grant.

14 (p) "Tier II project" means a project for which assistance
15 is sought or provided from funds other than those made directly
16 available from the federal capitalization grant.

17 Sec. 1502. (1) This part shall be construed liberally to
18 effectuate the legislative intent. All powers granted under this
19 part shall be broadly interpreted to effectuate the intent and
20 purposes of this part and shall not be interpreted as a limita-
21 tion of powers.

22 (2) Except as may be authorized by the federal water pollu-
23 tion control act, the fund shall not provide grant assistance to
24 a municipality or provide loans for the local share of projects
25 constructed with grants provided under title II of the federal
26 water pollution control act, chapter 758, 86 Stat. 833, 33
27 U.S.C. 1281, 1282 to 1293, and 1294 to 1299.

1 (3) This state is not liable to a municipality, or any other
2 person performing services for the municipality, for costs
3 incurred in developing or submitting an application for assist-
4 ance under this part.

5 (4) It is the specific intent of the legislature to minimize
6 paperwork for tier II projects.

7 Sec. 1503. (1) Municipalities shall consider and utilize,
8 where possible, cooperative regional or intermunicipal projects
9 in satisfying sewerage needs in the development of project
10 plans.

11 (2) A municipality may submit a project plan for use by the
12 director in developing a priority list.

13 (3) The project plan for a tier I project shall include doc-
14 umentation that demonstrates that the project is needed to assure
15 maintenance of, or to progress toward, compliance with the fed-
16 eral water pollution control act or part 11, and to meet the min-
17 imum requirements of the national environmental policy act of
18 1969, Public Law 91-190, 42 U.S.C. 4321, 4331 to 4335, and 4341
19 to 4347. The documentation shall demonstrate all of the
20 following:

21 (a) The need for the project.

22 (b) That feasible alternatives to the project were evaluated
23 taking into consideration the demographic, topographic, hydro-
24 logic, and institutional characteristics of the area.

25 (c) That the project is cost effective and implementable
26 from a legal, institutional, financial, and management
27 standpoint.

(d) Other information as required by the director.

(4) The project plan for a tier II project shall include documentation that demonstrates that the project is or was needed to assure maintenance of or progress towards compliance with the federal water pollution control act or part 11, and is consistent with all applicable state environmental laws. The documentation shall include all of the following information:

(a) Information to demonstrate the need for the project.

(b) A showing that the cost of the project is or was justified, taking into account available alternatives. Those costs determined by the director to be in excess of those costs justified are not eligible for assistance under this part.

(5) After notice and an opportunity for public comment, the director shall annually develop a priority list for sewage treatment works projects and a separate priority list for nonpoint source projects. Projects not funded during the time that a priority list developed under this section is in effect shall be automatically prioritized on the next annual list using the same criteria, unless the municipality submits an amendment to its plan that introduces new information to be used as the basis for prioritization. These priority lists shall be based upon project plans submitted by municipalities and the following criteria:

(a) That a project complies with all applicable standards in part 11 and the federal water pollution control act.

(b) An application for a segment of a project that received funds under the title II construction grant program or title VI state revolving loan funds of the federal water pollution control

1 act shall be first priority for funding for a period of not more
2 than 3 years after funds were first committed under those
3 programs.

4 (c) If the project is a sewage treatment works project, all
5 of the following criteria:

6 (i) The severity of the water pollution problem to be
7 addressed, maximizing progress towards restoring beneficial uses
8 and meeting water quality standards.

9 (ii) A determination of whether a project is or was neces-
10 sary to comply with an order, permit, or other document issued by
11 the director or the department or entered as part of an action
12 brought by the state against the municipality or a component of
13 the municipality.

14 (iii) The population to be served by the project.

15 (iv) The dilution ratio existing between the discharge
16 volume and the receiving stream.

17 (d) Rankings for nonpoint source projects shall be consis-
18 tent with the state nonpoint source management plan developed
19 pursuant to section 319 of title III of the federal water pollu-
20 tion control act, chapter 758, 101 Stat. 52, 33 U.S.C. 1329.

21 (e) Any other criteria established by the director by rule.

22 (6) The priority list shall be submitted annually to the
23 chair of the senate and house of representatives standing commit-
24 tees that consider legislation pertaining to the environment and
25 natural resources.

26 (7) For purposes of providing assistance, the priority list
27 shall take effect on the first day of each fiscal year.

1 (8) This section does not limit other actions undertaken to
2 enforce provisions of part 11, the federal water pollution con-
3 trol act, or any other act.

4 Sec. 1504. Subject to sections 1509 and 1510, assistance
5 provided to municipalities to construct sewage treatment works
6 projects and nonpoint source projects shall be in accordance with
7 all of the following:

8 (a) Assistance for approved sewage treatment works projects
9 shall be provided for projects in the fundable range of the pri-
10 ority list developed pursuant to section 1503(5), and to other
11 projects that may become fundable pursuant to section 1510.

12 (b) Assistance for approved qualified nonpoint source
13 projects shall be provided for projects in the fundable range of
14 the priority list developed pursuant to section 1503(5).

15 Sec. 1505. The director shall provide written descriptions
16 and timetables for actions required under this part, including
17 the intended use plan developed under section 1506, and may pro-
18 vide to municipalities that request assistance in writing other
19 information that the director considers appropriate.

20 Sec. 1506. (1) The director shall prepare and submit an
21 intended use plan annually to identify proposed annual intended
22 uses of the fund, and to facilitate the negotiation process that
23 the director may conduct with the EPA for the capitalization
24 grant agreement and schedule of payments to be made to this state
25 under the federal water pollution control act.

26 (2) The director shall provide for a public participation
27 process that requires not less than 1 public hearing for the

1 intended use plan. The director may make changes in the intended
2 use plan without holding additional hearings in response to the
3 comments received from the EPA and through the public participa-
4 tion process.

5 (3) The intended use plan shall include all of the
6 following:

7 (a) A copy of the state's priority lists.

8 (b) A description of the long- and short-term goals of the
9 fund.

10 (c) The proposed fundable range and an allocation of the
11 funds available for projects on the nonpoint source priority list
12 and for the sewage treatment priority list.

13 (d) A description of the projects that are on the priority
14 lists, including project categories and types, applicable dis-
15 charge or enforceable requirements, proposed terms of the assist-
16 ance, including a schedule of estimated disbursements of funds,
17 and the names of the municipalities proposed to receive
18 assistance.

19 (e) Any necessary assurances or proposals indicating how the
20 state intends to meet applicable federal requirements.

21 (f) A description of the criteria and method for distribu-
22 tion of the fund.

23 (g) A description of the public participation process fol-
24 lowed in the development of the intended use plan and the results
25 of that process.

26 (h) Any other information needed to comply with the federal
27 water pollution control act.

1 (i) Any other information considered appropriate by the
2 director.

3 (4) Upon notice from the EPA that the intended use plan is
4 approved, the director shall notify each municipality of its
5 inclusion on the intended use plan and shall further provide
6 copies of the sewage treatment works projects priority list, the
7 nonpoint source project priority list, and the intended use plan
8 to all persons requesting such information. Following notifica-
9 tion, the director shall establish, with the concurrence of the
10 municipality, a schedule for project plan approval, submittal of
11 a complete application for assistance, and approval of plans and
12 specifications.

13 Sec. 1507. (1) The director shall review, generally in pri-
14 ority order, the project plans for projects in the fundable range
15 and either approve or disapprove the plans within 120 days of
16 notifying the municipalities of their inclusion in the intended
17 use plan. Upon determination by the director that a project is
18 complex and warrants additional review, the director shall notify
19 the municipality and may extend the review period for not more
20 than 60 days.

21 (2) If the project plan is disapproved, the director shall
22 notify the municipality of any deficiencies that need to be
23 corrected.

24 (3) The director shall review subsequent submittals and
25 either approve or disapprove the amended project plan within 120
26 days of those submittals.

1 (4) If the project plan is not approved, the director shall
2 notify the municipality of the deficiencies.

3 Sec. 1508. (1) To apply for assistance from the fund, a
4 municipality shall submit the following, if applicable as deter-
5 mined by the director:

6 (a) If assistance is in the form of a loan, financial docu-
7 mentation that a dedicated source of revenue is established, con-
8 sistent with municipal bond obligations existing at the time
9 assistance is requested, and pledged to both of the following
10 purposes:

11 (i) If assistance is in the form of a loan, the timely
12 repayment of the loan.

13 (ii) Adequate revenues from a user-based source to fund the
14 operation and maintenance of the project.

15 (b) A project plan approved under section 1507.

16 (c) A certification by an authorized representative of a
17 municipality affirming that the municipality has the legal, mana-
18 gerial, institutional, and financial capability to build, oper-
19 ate, and maintain the project.

20 (d) A letter of credit, insurance, or other credit enhance-
21 ment to support the credit position of the municipality, as
22 required by the director.

23 (e) A set of plans and specifications suitable for bidding.

24 (f) A certification from an authorized representative of the
25 municipality that the applicant has, or will have prior to the
26 start of construction, all applicable state and federal permits
27 required for construction of the project.

1 (g) A certified resolution from the municipality designating
2 an authorized representative for the project.

3 (h) A certification from an authorized representative of the
4 municipality that no undisclosed fact or event, or pending liti-
5 gation, will materially or adversely affect the project, the
6 prospects for its completion, or the municipality's ability to
7 make timely loan repayments, if applicable.

8 (i) If applicable, all executed intermunicipal service
9 agreements.

10 (j) An agreement that the municipality will operate the
11 project in compliance with applicable state and federal laws.

12 (k) An agreement that the municipality will not sell, lease,
13 abandon, or otherwise dispose of the project without an effective
14 assignment of obligations and the prior written approval of the
15 director and the authority.

16 (l) An agreement that all municipal project accounts will be
17 maintained in accordance with generally accepted government
18 accounting standards as defined and required under the federal
19 water pollution control act.

20 (m) An agreement that the municipality will provide written
21 authorizations to the director for the purpose of examining the
22 physical plant and for examining, reviewing, or auditing the
23 operational or financial records of the project, and that the
24 municipality will require similar authorizations from all con-
25 tractors, consultants, or agents with which it negotiates an
26 agreement.

1 (n) An agreement that all municipal contracts with
2 contractors will provide that the contractor and any
3 subcontractor may be subject to a financial audit and that con-
4 tractors and subcontractors shall comply with generally accepted
5 governmental accounting standards.

6 (o) An agreement that all pertinent records shall be
7 retained and available to the director for a minimum of 3 years
8 after initiation of the operation and that if litigation, a
9 claim, an appeal, or an audit is begun before the end of the
10 3-year period, records shall be retained and available until the
11 3 years have passed or until the action is completed and
12 resolved, whichever is longer. As used in this subdivision,
13 "initiation of the operation" means the date certain set by the
14 municipality and accepted by the director, on which use of the
15 project begins for the purposes for which it was constructed.

16 (p) If the project is segmented as provided in section 1509,
17 a schedule for completion of the project and adequate assurance
18 that the project shall be completed with or without assistance
19 from the fund or that the segmented project shall be operational
20 without completion of the entire project.

21 (q) An agreement that the project shall proceed in a timely
22 fashion if the application for assistance is approved.

23 (r) An application fee, if required by the director.

24 (2) The requirement of subsection (1)(a) for a dedicated
25 source of revenue may include a revenue source pledged to repay
26 the debt to the fund from sources including, but not limited to,
27 1 or more of the following:

1 (a) Ad valorem taxes.

2 (b) Special assessments.

3 (c) User-based revenue collections.

4 (d) General funds of the municipality.

5 (e) Benefit charges.

6 (f) Tap-in fees, or other 1-time assessments.

7 (3) The department shall accept applications for assistance
8 from municipalities in the fundable range of the priority list
9 that have approved project plans and shall determine whether an
10 application for assistance is administratively complete and
11 notify the applicant within 30 calendar days of receipt of the
12 application specifying any additional information necessary to
13 complete the application.

14 (4) The department shall approve or disapprove an applica-
15 tion within 30 calendar days of the determination that the appli-
16 cation is complete.

17 Sec. 1509. To ensure that a disproportionate share of
18 available funds for a given fiscal year is not committed to a
19 single sewage treatment work project, the director may segment a
20 sewage treatment work project if either of the following criteria
21 is present:

22 (a) The cost of the proposed project is more than 30% of the
23 amount available in the fund.

24 (b) Upon application of a municipality, the director has
25 approved a municipality's application for segmenting a project.

26 Sec. 1510. A project in the fundable range of a priority
27 list that fails to meet the schedule established by the

1 department under section 1506, or does not have approved plans
2 and specifications and an approvable application 90 days prior to
3 the last day of the fiscal year, whichever comes first, is
4 subject to bypass. A municipality may request an extension of
5 the schedule for cause. A project bypassed pursuant to this sec-
6 tion shall not be considered for an order of approval until all
7 other projects in the fundable range have either been funded or
8 rejected. This section does not prohibit the inclusion of the
9 project in the priority list of the next annual funding cycle or
10 the resubmission of an application for assistance in the next
11 annual funding cycle. After a project within the fundable range
12 has been bypassed, the director may award assistance to projects
13 outside the fundable range. Assistance shall be made available
14 to projects outside the fundable range in priority order contin-
15 gent upon the municipality's satisfaction of all applicable
16 requirements for assistance pursuant to section 1508 within the
17 time period established by the director, but not to exceed 60
18 days from the date of notification of bypass.

19 Sec. 1511. (1) The director shall review a complete appli-
20 cation for assistance for a project in the fundable range. If
21 the director approves the application for assistance, the direc-
22 tor shall issue, subject to section 1510, an order of approval to
23 establish the specific terms of the assistance. The order of
24 approval shall include, but not be limited to, all of the
25 following:

26 (a) The term of the assistance.

1 (b) The maximum principal amount of the assistance.

2 (c) The maximum rate of interest or method of calculation of
3 the rate of interest that will be used, or the premium charged.

4 (2) The order of approval shall incorporate all require-
5 ments, provisions, or information included in the application and
6 other documents submitted to the director during the application
7 process.

8 (3) After issuance of the order, the director shall certify
9 to the authority that the municipality is eligible to receive
10 assistance.

11 (4) Within each annual funding cycle, the method of estab-
12 lishing the interest rate applicable to a loan or project refi-
13 nancing assistance shall be applied equally within tier I and
14 tier II projects to all municipalities receiving such
15 assistance.

16 (5) The method of establishing interest rates may provide
17 for a different level of subsidy for tier I projects than for
18 tier II projects.

19 Sec. 1512. (1) The director may make a determination that
20 assistance should be terminated and may issue an order recommend-
21 ing that the authority take appropriate action to terminate
22 assistance.

23 (2) Cause for making a determination under subsection (1)
24 includes, but is not limited to, 1 or more of the following:

25 (a) Substantial failure to comply with the terms and condi-
26 tions of the agreement providing assistance.

1 (b) A legal finding or determination that the assistance was
2 obtained by fraud.

3 (c) Practices in the administration of the project that are
4 illegal or that may impair the successful completion or organi-
5 zation of the project.

6 (d) Misappropriation of assistance for uses other than those
7 set forth in the agreement providing assistance.

8 (3) The director shall give written notice to the municipal-
9 ity by certified letter of the intent to issue an order recom-
10 mending that assistance be terminated. This notification must be
11 issued not less than 30 days before the director forwards the
12 order recommending that the authority take appropriate action to
13 terminate assistance.

14 (4) The termination of assistance by the authority shall not
15 excuse or otherwise affect the municipality's requirement for
16 repayment of the outstanding loan balance to the fund.

17 (5) Termination of assistance under this section does not
18 relieve the municipality of any requirements that may exist under
19 state or federal law to construct the project.

20 Sec. 1513. (1) A municipality may petition the director to
21 make a determination and issue an order under section 1512(1)
22 for cause.

23 (2) The director may issue an order to terminate the project
24 for cause that is effective on the date the project ceases
25 activities.

26 (3) Subject to the termination of assistance by the
27 authority and payment of any appropriate termination settlement

1 costs, the director shall issue an order to the authority
2 recommending appropriate action.

3 (4) The termination of assistance by the authority shall not
4 excuse or otherwise affect the municipality's requirement for
5 repayment of the outstanding loan balance to the fund.

6 (5) Termination of the loan under this section does not
7 relieve the municipality of any requirements that may exist under
8 state or federal law to construct the project.

9 Sec. 1514. The costs of administering and implementing this
10 part by the department, the designated agents of the department,
11 and the authority may be paid from funds annually appropriated by
12 the legislature from 1 or more of the following sources:

13 (a) An amount taken from the federal capitalization grant,
14 subject to the limitations prescribed in the federal water pollu-
15 tion control act.

16 (b) Loan fees, not to exceed the ratio that the annual
17 appropriation for administration of this part bears to the total
18 value of loans awarded for the fiscal year in which the appropri-
19 ation was made, as estimated in the intended use plan.

20 (c) Interest or earnings realized on loan repayments to the
21 fund, unless the earnings are pledged to secure or repay any
22 indebtedness of the authority.

23 (d) Proceeds of bonds or notes issued pursuant to the fund
24 and sold by the authority.

25 (e) Any other money appropriated by the legislature.

26 Sec. 1515. The priority list developed under Act No. 329 of
27 the Public Acts of 1966, being sections 323.111 to 323.128 of the

1 Michigan Compiled Laws, and rules promulgated under that act,
2 shall remain in effect until a priority list is developed by the
3 director pursuant to this part.

4 Sec. 1516. The director has the powers necessary or conven-
5 ient to carry out and effectuate the purpose, objectives, and
6 provisions of this part, and the powers delegated by other laws
7 or executive orders, including, but not limited to, the power
8 to:

9 (a) Make, execute, and deliver contracts, conveyances, and
10 other instruments necessary or convenient to the exercise of his
11 or her powers.

12 (b) Solicit and accept gifts, grants, loans, allocations,
13 appropriations, and other aid, including capitalization grant
14 awards, from any person, or the federal or state, or a local gov-
15 ernment or any agency of the federal, state, or local government,
16 to enter into agreements with any person or the federal, state,
17 or a local government, or to participate in any other way in any
18 federal, state, or local government program consistent with this
19 part and the purposes of this part.

20 (c) Negotiate and enter into agreements and amendments to
21 agreements with the federal government to implement establishment
22 and operation of the fund, including capitalization grant agree-
23 ments and schedules of payments.

24 (d) Engage personnel as is necessary and engage the services
25 of private consultants, managers, counsel, auditors, engineers,
26 and scientists for rendering professional management and
27 technical assistance and advice.

1 (e) Charge, impose, and collect fees and charges in
2 connection with any transaction authorized under this part and
3 provide for reasonable penalties for delinquent payment of fees
4 or charges.

5 (f) Review and approve all necessary documents in a
6 municipality's application for assistance and to further issue an
7 order authorizing assistance to the authority.

8 (g) Promulgate rules necessary to carry out the purposes of
9 this part and to exercise the powers expressly granted in this
10 part pursuant to the administrative procedures act of 1969, Act
11 No. 306 of the Public Acts of 1969, being sections 24.201 to
12 24.328 of the Michigan Compiled Laws.

13 (h) Administer, manage, and do all other things necessary or
14 convenient to achieve the objectives and purposes of the fund,
15 the authority, this part, or other state and federal laws that
16 relate to the purposes and responsibilities of the fund.

17 (i) Make application requesting a capitalization grant and
18 prepare, submit, and certify any required or appropriate informa-
19 tion with that application.

20 (j) Establish priority lists and fundable ranges for
21 projects and the criteria and methods used to determine the dis-
22 tribution of the funds available to the fund among the various
23 types of assistance to be offered and to select projects to be
24 funded.

25 (k) Prepare and submit an annual report required by the fed-
26 eral water pollution control act.

PART 17 SEWAGE DISPOSAL AND WATER SUPPLY DISTRICTS

Sec. 1701. As used in this part:

(a) "Due notice" means notice published at least twice, with an interval of at least 7 days between the 2 publication dates, in a newspaper or other publication of general circulation within the appropriate area, or if a publication of general circulation is not available, by posting at a reasonable number of conspicuous places within the appropriate area. Posting shall include, if possible, posting at public places where it may be customary to post notices concerning county or municipal affairs. At any hearing held pursuant to the notice, at the time and place designated in the notice, adjournment may be made without renewing the notice for an adjournment date.

(b) "Municipality" includes a metropolitan district, water or sewer authority created by law, county, township, charter township, incorporated city, or incorporated village. An incorporated village, for the purposes of this part, is a governmental unit separate and distinct from the township or townships in which it is located.

(c) "Sewage disposal systems" includes all interceptor sewers, storm sewers, sanitary sewers, combined sanitary and storm sewers, sewage treatment plants, and all other plants, works, instrumentalities, and properties used or useful in connection with the collection, treatment, and disposal of sewage and industrial wastes.

(d) "Water supply system" includes all plants, work, instrumentalities and properties used or useful in connection

1 with obtaining a water supply, the treatment of water and the
2 distribution of water.

3 (e) "United States or agencies of the United States"
4 includes the United States of America or any bureau, department,
5 agency, or instrumentality of the United States or otherwise cre-
6 ated by the congress of the United States.

7 (f) "Water supply and sewage disposal district" means a gov-
8 ernmental subdivision of this state and a public body corporate
9 and politic organized in accordance with this part for the pur-
10 pose, with the powers, and subject to the restrictions in this
11 part.

12 Sec. 1702. The water resources commission under this part
13 has all of the following powers and duties:

14 (a) To foster and encourage the organization of sewage dis-
15 posal and water supply districts, to act as the administrative
16 agency in the proceedings incident to the formation of districts,
17 to offer and lend appropriate assistance to the directors of dis-
18 tricts organized as provided in this part in the carrying out of
19 any of their powers, functions, and programs.

20 (b) To cooperate, negotiate, and enter into contracts with
21 the other governments, governmental units and agencies in matters
22 concerning water supply systems and sewage disposal systems; to
23 take steps and perform acts and execute documents as may be nec-
24 essary to take advantage of any act enacted by the congress of
25 the United States that may make available funds for any of the
26 purposes enumerated in this part or be otherwise of assistance in
27 carrying out the purposes of this part; to disburse money that

1 may be appropriated by the legislature for the use and benefit of
2 the districts created under this part or municipalities or local
3 units of government of this state in accordance with the formula
4 prescribed in this part or in the acts of appropriation, and to
5 disburse money that may be received by this state from the United
6 States government for the purposes provided for in this part in
7 accordance with the formula set forth by applicable acts of
8 congress.

9 (c) To act as the fiscal agent for this state, for the pur-
10 pose of making available to local units of government and the
11 districts as may be organized under this part, money or instru-
12 ments of indebtedness that may be approved by the legislature or
13 the people of this state for the construction and operation of
14 sewage disposal systems by local units of government or
15 districts.

16 (d) To coordinate its duties and functions with similar or
17 related duties and functions that are performed by other state
18 agencies or governmental units to coordinate and cooperate
19 efforts to accomplish the purposes of this part.

20 Sec. 1703. (1) Two or more municipalities, by resolution of
21 their legislative bodies, may file a petition with the water
22 resources commission requesting that a sewage disposal district
23 or a water supply district or a combination of both be organized
24 to function in the area described in the petition. The petition
25 shall set forth all of the following:

26 (a) The proposed name of the district.

1 (b) That there is need in the interests of public health and
2 welfare for the district to function in the area described in the
3 petition.

4 (c) A description of the area proposed to be organized as a
5 district. The description is not required to be given by metes
6 and bounds or by legal subdivision, but is sufficient if the
7 description is generally accurate and designates the local units
8 of governments comprised within the proposed district. The ter-
9 ritory shall include only area within the boundaries of the peti-
10 tioning municipality.

11 (d) A request that a referendum be held within the defined
12 territory on the question of creation of the district in the ter-
13 ritory, and that the agency create the requested district.

14 (2) When more than 1 petition is filed covering a portion of
15 the same territory, the water resources commission may consoli-
16 date all or any of the petitions.

17 Sec. 1704. Within 30 days after a petition is filed with
18 the water resources commission, or later if authorized by the
19 water resources commission, but not to exceed 90 days, the water
20 resources commission shall cause due notice to be given of a
21 hearing upon the question of the desirability and necessity in
22 the interests of public health and welfare of the creation of the
23 district, upon the question of appropriate boundaries to be
24 assigned to the district, upon the propriety of the petition and
25 of the proceedings taken under this part, and upon all other
26 questions relative to this matter. All interested parties have
27 the right to attend the hearings and be heard. Due notice of the

1 time and place of holding the hearing shall be given to all of
2 the executive officials of the municipalities included within the
3 involved territory. If it appears upon the hearing that it is
4 desirable to include within the proposed district territory out-
5 side of the area within which due notice has been given, or if it
6 is made to appear that more data or information is needed, the
7 hearing shall be publicly adjourned and due notice of further
8 hearing shall be given throughout the entire area considered for
9 inclusion in the district and a further hearing held. The water
10 resources commission shall cooperate to the fullest extent possi-
11 ble with the local units of government included within the terri-
12 torial limits of the proposed district in the making of the nec-
13 essary investigations and engineering and financial studies that
14 may be required for the proper decisions to be made by the water
15 resources commission upon the conclusion of the hearing. After
16 the hearing, if the water resources commission determines upon
17 the facts presented and upon other relevant facts and information
18 as may be available to it, that there is need in the interests of
19 public health and welfare for a sewage disposal or water supply
20 district, or both, to be created and function in the territory
21 considered at the hearing, it shall make and record this determi-
22 nation and shall define the boundaries of the districts by the
23 territorial limits of municipalities included within the district
24 or by metes and bounds. In making the determination and in
25 defining the boundaries, the water resources commission may give
26 due weight and consideration to the physical and topographical
27 conditions of the area considered, availability or

1 nonavailability of water resources, the engineering and economic
2 feasibility of the construction and management of the works
3 required and all other relevant and pertinent facts that may be
4 brought to its attention or of which it may have knowledge. Such
5 additional territory shall not be included without the approval
6 by resolution of the legislative body of any municipality affect-
7 ed, including the original petitioners.

8 Sec. 1705. (1) If the water resources commission determines
9 after the hearing that there is no need for a district to be
10 formed in the territory considered at the hearing and that the
11 operation of the district within the defined boundaries is not
12 practicable and feasible from the standpoint of engineering,
13 administration, and financing, the water resources commission
14 shall make and record the determination and shall deny any peti-
15 tion filed with it.

16 (2) If the water resources commission has made and recorded
17 a determination that in the interests of public health and wel-
18 fare there is a need for the formation, organization, and func-
19 tioning of a district in a particular territory and has defined
20 the boundaries thereof, it shall consider the question of whether
21 the operation of that district within the boundaries with the
22 powers conferred upon districts in this part is desired by a
23 majority of the electors within the boundaries of the district.
24 To assist the water resources commission in the determination of
25 this question, it is the duty of the water resources commission,
26 within a reasonable time of entry of the finding that there is
27 need for the organization of the proposed district and the

1 determination of the boundaries of the district, to order a
2 referendum within the proposed district upon the proposition of
3 the creation of the district and to order the municipalities
4 affected to cause due notice of the referendum to be given. The
5 water resources commission shall direct the officials in charge
6 of the holding of elections in the local units of government
7 included within the district to call a special election or to
8 place the referendum on the ballot at the next general election
9 to be held in all of the territory comprising the district. The
10 question shall be submitted by ballots prepared by the water
11 resources commission that shall succinctly describe the district
12 proposed to be formed, the area in which it shall function, and
13 in appropriate language require those voting on the proposition
14 to vote for or against the creation of the district, in accord-
15 ance with the requirements of law for the holding of referendums
16 on state questions. Municipalities affected are responsible for
17 the costs of the preparation of the ballots. Only electors who
18 have property assessed for taxes within the boundaries of the
19 district are eligible to vote in the referendum. Upon the com-
20 pletion of the referendum, the water resources commission shall
21 publish the result thereof.

22 (3) The water resources commission shall pay all expenses
23 for the issuance of the notice and the conduct of the hearings
24 described in this section and shall supervise the conduct of the
25 hearings. The referendum shall be held by the regular estab-
26 lished election officials and any costs shall be borne by the

1 affected municipalities. The water resources commission shall
2 promulgate rules governing the conduct of the hearings.

3 (4) If the referendum described in subsection (3) calls for
4 the formation of the proposed district the water resources com-
5 mission shall call a conference of all the officials of all of
6 the municipalities within the boundaries of the proposed district
7 and the commission shall make every effort to encourage the
8 municipalities to incorporate an authority for the purpose of
9 constructing and operating a sewage disposal system or water
10 supply system under the terms and authority vested in the munici-
11 palities pursuant to law. If after the expiration of 180 days
12 from the holding of the conference, or within an additional
13 period as the water resources commission may consider necessary,
14 the municipalities have not created an authority as provided in
15 this act, the water resources commission shall make, file, and
16 publish as provided in this act a determination creating the dis-
17 trict as contained in the application and as approved by the
18 referendum.

19 (5) Upon the making and filing of the determination as
20 described in subsection (4), due notice shall be served and pub-
21 lished and the water resources commission shall appoint 5 direc-
22 tors who are electors for the purpose of this act within the ter-
23 ritory comprising the district and who shall comprise a temporary
24 governing body of the district. The members of the temporary
25 governing body shall hold office until the officers of the first
26 permanent governing body have been elected and qualified.

1 (6) The district shall be a governmental subdivision of this
2 state and a public body corporate upon the taking of the
3 following proceedings:

4 (a) The appointed directors shall present to the secretary
5 of state an application signed by them that sets forth all of the
6 following:

7 (i) That a petition for the creation of the district was
8 filed with the water resources commission pursuant to this part,
9 that the proceedings specified in this part were taken, that the
10 application is being filed in order to complete the organization
11 of the district as a governmental subdivision and a public body
12 corporate under this part, and that the applicants are the tempo-
13 rary directors of the district.

14 (ii) The name and official residence of each of the direc-
15 tors together with a certification of their appointment.

16 (iii) The name which is proposed for the district.

17 (iv) The location of the present office that has been
18 selected for the district by the directors.

19 (7) The application shall be subscribed and sworn to by at
20 least a majority of the directors before an officer authorized by
21 the laws of the state to administer oaths. The officer shall
22 certify upon the application that he or she personally knows the
23 directors and that each has subscribed thereto in the officer's
24 presence. The application shall be accompanied by a certified
25 statement made by the water resources commission that a petition
26 was filed, notice issued, and hearing held as required in this
27 part; that the water resources commission determined that there

1 is need in the interests of the public health and welfare for a
2 district to function in the proposed territory; that the bounda-
3 ries are defined; that notice was given and referendum held in
4 the question of creation of the district; that the result of the
5 referendum showed a majority of the votes cast in the referendum
6 to be in favor of the creation of such a district; and that the
7 water resources commission did determine that the operation of
8 the proposed district is administratively practicable and
9 feasible. In addition, the statement shall set forth the bounda-
10 ries of the district.

11 (8) The secretary of state shall examine the application and
12 statement and if he or she finds that the name proposed for the
13 district is not identical with any similar district of this state
14 or so nearly identical as to lead to confusion or uncertainty,
15 the secretary of state shall receive and file the application and
16 statement and shall record them in an appropriate book of record
17 in the office of the secretary of state. When the application
18 and statement have been made, filed and recorded as provided in
19 this section, the district shall constitute a governmental subdi-
20 vision of this state and a public body corporate. The secretary
21 of state shall make and issue to the directors a certificate
22 under the seal of the state of the due organization of the dis-
23 trict and shall record such certificate with the application and
24 statement.

25 (9) Petitions for including additional territory within a
26 district may be filed with the water resources commission and the
27 proceedings provided for in this part or petitions to organize a

1 district shall be observed in the case of petitions for
2 inclusion. The water resources commission shall prescribe the
3 form for the petitions, which shall be as nearly as possible to
4 the form prescribed in this part for petitions to organize a
5 district. The petition shall be filed with the water resources
6 commission and upon its receipt it shall be referred to the gov-
7 erning body of the district to be affected by the petition and
8 if, after due consideration, the governing body determines
9 against the inclusion of the additional territory, the petition
10 shall be denied.

11 (10) In any suit, action, or proceedings involving the
12 validity or enforcement of or relating to any contract, proceed-
13 ings, or action of the district, the district shall be considered
14 to be legally established in accordance with this part upon proof
15 of the issuance of the certificate by the secretary of state.
16 The certificate of the secretary of state shall be admissible in
17 evidence in any suit, action, or proceedings described in this
18 subsection and shall be proof of the filing and contents of the
19 certificate.

20 Sec. 1706. (1) The first permanent governing body of the
21 district after the district has been organized and has received
22 the secretary of state certificate described in section 5 shall
23 consist of 5 directors. The directors shall be nominated and
24 elected at the next general state election in the same manner and
25 pursuant to the election laws applicable to members of the house
26 of representatives.

1 (2) Except for the first directors, the directors shall hold
2 office for a term of 6 years. Among the first directors to be
3 elected, the 2 receiving the highest number of votes shall hold
4 office for the full term of 6 years and the 3 receiving the next
5 highest number of votes shall hold office for 4 years. The sec-
6 retary of state shall be responsible for the certification of the
7 election of the directors. A vacancy shall be filled by appoint-
8 ment made by the remaining directors for the unexpired term.

9 (3) The business which the directors may perform shall be
10 conducted at a public meeting of the directors held in compliance
11 with the open meetings act, Act No. 267 of the Public Acts of
12 1976, being sections 15.261 to 15.275 of the Michigan Compiled
13 Laws. Public notice of the time, date, and place of the meeting
14 shall be given in the manner required by Act No. 267 of the
15 Public Acts of 1976. A majority of the directors shall consti-
16 tute a quorum for the transaction of business and the concurrence
17 of a majority of the total number of directors in a matter shall
18 be required for the matter's determination. A director shall not
19 receive compensation for services, but shall be reimbursed for
20 expenses necessarily incurred in the discharge of his or her
21 duties.

22 Sec. 1707. (1) The directors may employ an executive secre-
23 tary, technical experts, and other officers, agents, and employ-
24 ees, permanent or temporary, as required, and shall determine
25 their qualifications, duties, and compensation. The directors
26 may delegate to the chairperson, to 1 or more directors, or to 1

1 or more agents or employees, powers and duties as they consider
2 proper.

3 (2) The directors shall furnish to the water resources com-
4 mission upon request copies of all rules, orders, contracts,
5 forms, minutes, proceedings, and other documents that they adopt
6 or employ and other information concerning their activities as
7 required by the water resources commission in the performance of
8 the water resources commission's duties under this part. A writ-
9 ing prepared, owned, used, in the possession of, or retained by
10 the directors in the performance of an official function shall be
11 made available to the public in compliance with the freedom of
12 information act, Act No. 442 of the Public Acts of 1976, being
13 sections 15.231 to 15.246 of the Michigan Compiled Laws.

14 (3) The directors shall provide for the execution of surety
15 bonds for employees and officers entrusted with funds or proper-
16 ty; shall provide for the keeping of a full and accurate record
17 of their proceedings and of rules and orders promulgated or
18 adopted; and shall provide for an annual audit of the accounts of
19 receipts and disbursements. The directors shall request that the
20 legislative body and executive officers of a municipality located
21 within the territory comprised within the district designate a
22 representative to advise and consult with the directors of the
23 district on questions of program and policy that may affect the
24 property, water supply, or sewage disposal problems, or other
25 interests of the municipality.

26 Sec. 1708. A district organized under this part constitutes
27 a governmental subdivision of this state and a body corporate,

1 exercising public powers, with power to sue and to be sued in any
2 court of this state. A district shall possess all the powers
3 necessary to organize itself and also possesses powers incident
4 to the powers enumerated in this part. The district is autho-
5 rized and empowered to do all of the following:

6 (a) Pursuant to the terms of any contract entered into under
7 section 1709 of this part to construct and operate sewage dis-
8 posal systems and water supply systems within the area comprising
9 its territorial limits and to acquire, extend, and improve the
10 systems.

11 (b) To make and cause to be made surveys, studies, and
12 investigations of water resources of the area within its territo-
13 rial limits for the purpose of determining the feasibility and
14 practicability of developing new sources of water supply to
15 municipalities, industrial and commercial establishments, and to
16 agricultural and residential lands and areas so that water is
17 available to agricultural and residential lands in a quantity and
18 quality necessary for the protection of the public health and the
19 promotion of the general welfare within the areas.

20 (c) To make and cause to be made surveys, studies, and
21 investigations for the purpose of ascertaining the requirements
22 of municipalities, industrial and commercial establishments,
23 individual and collective groups, or occupants of lands for
24 sewage disposal systems so that sewers and sewage disposal facil-
25 ities are available to the entities described in this subdivision
26 that are situated within the territorial limits of the district

1 and that may need or require the facilities for the protection of
2 public health and the promotion of the general welfare.

3 (d) To cooperate with and enter into agreements with any
4 person as may be necessary for the full performance of its func-
5 tions and duties and to acquire by purchase, exchange, lease,
6 gift, grant, bequest, devise or otherwise any property, real or
7 personal, or rights or interests in property, either within or
8 outside of its territorial limits; to maintain, administer and
9 improve any acquired properties; to receive income from same and
10 to expend the income in implementing this part and its purposes;
11 and to sell, lease, or otherwise dispose of any of its property
12 or interests in property to implement this part and its
13 purposes. The district is invested with the power of eminent
14 domain in acquiring private property for public use and for the
15 purposes of exercising the power, it may proceed under Act
16 No. 149 of the Public Acts of 1911, being sections 213.21 to
17 213.25 of the Michigan Compiled Laws, or any other statute that
18 grants to any municipality or public body the authority to
19 acquire private property for public use.

20 (e) To accept and receive money as may be appropriated to
21 the district by the legislature of this state.

22 (f) To accept and receive any funds or money which may be
23 appropriated by any act of congress either directly from any fed-
24 eral governmental agency responsible for the disbursement and
25 allocation of the funds or through the water resources commission
26 and for that purpose the districts are authorized to execute
27 contracts, documents, or agreements as may be required by the

1 congressional act as a prerequisite to the securing of the
2 funds.

3 Sec. 1709. (1) The district may enter into contracts with
4 any municipality located within its territorial limits providing
5 for the acquisition, construction, improvement, enlargement,
6 extension, operation, and financing of a sewage disposal system
7 or water supply system. A contract shall provide for the alloca-
8 tion and payment of the share of the total cost to be borne by
9 the municipality in annual installments for a period not exceed-
10 ing 40 years. Each contracting municipality may pledge its full
11 faith and credit for the payment of the obligation in the manner
12 and times specified in the contract. If a contracting municipal-
13 ity pledges its full faith and credit, the municipality shall
14 include in its annual tax levy a sufficient amount so that the
15 estimated collections will be sufficient to promptly pay when due
16 the portion of the obligation falling due before the time of the
17 following year's tax collection. The district shall make a rea-
18 sonable charge for its services which it renders to the users in
19 order to cover the retirement of outstanding indebtedness, costs
20 of operation, maintenance, and replacement of its plants and
21 reserves for capital improvements. If there is excess money in
22 the treasury of the district after all of the contingencies have
23 been met, the excess shall be rebated to the contracting munici-
24 palities in proportion to the total amount that the municipality
25 pay for services it has received from the district. No limita-
26 tion in any statute or charter shall prevent the levy and
27 collection by each of the contracting municipalities of the full

1 amount of taxes necessary for the payment of the contractual
2 obligation. If at the time of making the annual tax levy, there
3 are other funds on hand earmarked for the payment of the contrac-
4 tual obligation, then credit therefor may be taken upon the
5 annual levy for the payment of the obligation. These funds may
6 be raised by each contracting municipality by the use of 1 or
7 more of the following methods:

8 (a) The levy of special assessments on property benefited by
9 the sewage disposal system or water supply system, the procedures
10 relative to the levying and collection of the special assessments
11 to conform as near as may be to applicable charter or statutory
12 provisions.

13 (b) The levy and collection of rates or charges to users and
14 beneficiaries of the service or services furnished by the sewage
15 disposal system or water supply system.

16 (c) From money received, or to be received, derived from the
17 imposition of taxes by this state, unless the money for this pur-
18 pose is expressly prohibited by the constitution of this state.

19 (d) From any other fund or funds that may be validly used
20 for the purpose. The contract may provide for any and all mat-
21 ters relating to the acquisition, construction, operation, and
22 financing of the sewage disposal system or water supply system as
23 are considered necessary, including authorization to the district
24 to issue bonds secured by the full faith and credit pledges of
25 the contracting municipalities, as authorized in this part. The
26 contract may provide for appropriate remedies in case of default,
27 including, but not limited to, the right of the municipalities to

1 authorize the county treasurer or other official charged with the
2 disbursement of funds derived from the state sales tax levy under
3 the general sales tax act, Act No. 167 of the Public Acts of
4 1933, being sections 205.51 to 205.78 of the Michigan Compiled
5 Laws, to withhold sufficient funds to make up any default or
6 deficiency in funds.

7 (2) A municipality desiring to enter into a contract with
8 the district under this section shall authorize, by resolution of
9 its governing body, the execution of the contract. The resolu-
10 tion shall be published in 1 or more newspapers of general circu-
11 lation within the municipality, and the contract may be executed
12 without a vote of the electors upon the expiration of 30 days
13 after the date of the publication unless, within the 30 day
14 period, a petition signed by not less than 10% of the registered
15 electors residing within the limits of the municipality is filed
16 with the clerk of the municipality requesting a referendum upon
17 the execution of the contract. If this occurs, the contract
18 shall not be executed until approval by the vote of a majority of
19 the electors of the municipality qualified to vote and voting
20 thereon at a general or special election to be held not more than
21 90 days after the filing of the petition. A special election
22 called for this purpose shall not be included in any statutory or
23 charter limitation as to the number of special elections to be
24 called within any period of time. Signatures on any petition
25 shall be verified by some person under oath, as the actual signa-
26 tures of the persons whose names are signed on the petition, and
27 the clerk of the municipality has the same power to reject

1 signatures as city clerks under section 25 of Act No. 279 of the
2 Public Acts of 1909, being section 117.25 of the Michigan
3 Compiled Laws. The number of registered electors in a municipal-
4 ity is determined by the registration books as of the date of the
5 filing of the petition.

6 (3) To obtain funds to acquire, construct, improve, enlarge,
7 or extend the sewage disposal system or water supply system
8 authorized by this part, the district, after the execution of the
9 contract or contracts authorized by this part, upon ordinance or
10 resolution adopted by the district, may issue its negotiable
11 bonds secured by the full faith and credit pledges made by each
12 contracting municipality pursuant to authorization contained in
13 this part and the contracts entered into pursuant to this part.
14 The bonds shall be serial bonds with annual maturities, the first
15 of which shall fall due not more than 4 years from the date of
16 issuance, and the last of which shall fall due not more than 40
17 years from the date of issuance, and a maturity after 4 years
18 from date of issuance shall be not less than 1/4 the amount of
19 any subsequent maturity. Except as otherwise provided in this
20 part, bonds shall be issued and sold and subject to all other
21 applicable provisions of the municipal finance act, Act No. 202
22 of the Public Acts of 1943, being sections 131.1 to 139.3 of the
23 Michigan Compiled Laws. The ordinance or resolution authorizing
24 the issuance of the bonds shall include the terms of the
25 contracts.

26 Sec. 1710. The district may enter into a contract for the
27 furnishing of sewage treatment services by any sewage treatment

1 plant owned or operated by the district as a part of its sewage
2 disposal system or the furnishing of water service from any water
3 facilities owned or operated by the district. This contract
4 shall provide for reasonable charges or rates for the service
5 furnished. Any income derived from a contract described in this
6 section shall be applied by the district to the costs of opera-
7 tion and maintenance of its sewage disposal system or its water
8 supply system, and any balances remaining after payment of its
9 cost in reduction of its outstanding bonded indebtedness incurred
10 for the acquisition or improvement of its sewage disposal system
11 or water supply system. A contract shall not exceed a period of
12 40 years.

13 Sec. 1711. If territory that is part of a district created
14 under this act is detached from a municipality and transferred to
15 a municipality that is not part of the district, the territory
16 shall remain a part of the municipality from which detached only
17 for the purpose of carrying out any contractual obligations or
18 for the purpose of levying a tax to retire any bonded indebted-
19 ness incurred by such district for which the territory is liable
20 until the contractual obligations are fulfilled or the bonds are
21 redeemed, or sufficient funds are available in the district's
22 debt retirement fund for this purpose. A territory described in
23 this section is a part of the municipality to which transferred
24 for all other purposes and subsequent to the redemption of the
25 bonds or the time when sufficient funds are available to redeem
26 the bonds, the territory is no longer a part of the district.

1 Sec. 1712. If the governing body of a district formed under
2 this part that acquires, extends, improves, or operates a sewage
3 disposal system or water supply system or provides for the sale
4 and purchase of sewage disposal service or water supply service
5 from an existing system or systems and executes contracts that
6 may be necessary, the authority may, pursuant to any contract
7 entered into under section 1709, issue self-liquidating revenue
8 bonds in accordance with the revenue bond act of 1933, Act No. 94
9 of the Public Acts of 1933, being sections 141.101 to 141.140 of
10 the Michigan Compiled Laws, or any other act providing for the
11 issuance of revenue bonds. However, these bonds are payable
12 solely from the revenues of the sewage disposal system or the
13 water supply system. The charges specified in any contract are
14 subject to increase by the district at any time if necessary to
15 provide funds to meet its obligations and any contract authorized
16 by this part is for a period of not more than 40 years. The leg-
17 islative body of any municipality that enters into a contract
18 with the district may raise by taxes or pay from its general
19 funds any money required to be paid under the terms of the con-
20 tract to obtain maps, plans, designs, specifications, and cost
21 estimates of the proposed sewage disposal system or water supply
22 system.

23 PART 19 SEWAGE SYSTEMS

24 Sec. 1901. As used in this part:

25 (a) "Governmental agencies" means local units of government,
26 metropolitan districts, or other units of government or the

1 officers of the units of government authorized to own, construct,
2 or operate sewerage systems to serve the public.

3 (b) "Plans and specifications" means a true description or
4 representation of the entire sewerage system and parts of a
5 system proposed or operated by a person as the same exists or is
6 to be constructed, and also a full and fair statement of how the
7 system is to be operated.

8 (c) "Sewerage system" means a system of pipes and structures
9 including pipes, channels, conduits, manholes, pumping stations,
10 sewage or waste treatment works, diversion and regulatory
11 devices, outfall structures, and appurtenances, collectively or
12 severally, actually used or intended for use by the public for
13 the purpose of collecting, conveying, transporting, treating, or
14 otherwise handling sanitary sewage or other industrial liquid
15 wastes that are capable of adversely affecting the public
16 health.

17 Sec. 1902. The director of public health is given power and
18 control as limited in this part over persons engaged in furnish-
19 ing sewerage or sewage treatment service, or both, and over sew-
20 erage systems.

21 Sec. 1903. The director of public health and his or her
22 agents and representatives may enter at reasonable times the sew-
23 erage systems, and other property of a person for the purpose of
24 inspecting a sewerage system and carrying out the authority
25 vested in him or her by this part.

26 Sec. 1904. The director of public health may promulgate and
27 enforce rules as he or she considers necessary governing and

1 providing a method of conducting and operating all or a part of
2 sewerage systems including sewage treatment works. The director
3 of public health shall classify sewage treatment works with
4 regard to size, type, location, and other physical conditions
5 affecting those works and according to the skill, knowledge,
6 experience, and character that the person who is in charge of the
7 active operation of the sewage treatment works has to success-
8 fully operate the works, to prevent the discharge of deleterious
9 matter capable of being injurious to the health of the people, or
10 to other public interests. The director of public health shall
11 examine or provide for the examination of persons as to their
12 qualifications to operate sewage treatment works. He or she
13 shall promulgate rules regarding the classification of sewage
14 treatment works, the examinations for certification of operators
15 for those works, and the issuance and revocation of certificates,
16 and shall issue and revoke certificates in accordance with those
17 rules. Every sewage treatment works subject to this part shall
18 be under the supervision of a properly certified operator, except
19 that this section does not require the employment of a certified
20 operator in a waste treatment works that receives only wastes
21 that are not potentially prejudicial to the public health.

22 Sec. 1905. (1) The mayor of each city, the president of
23 each village, the township supervisor, the responsible executive
24 officer of a governmental agency, and all other persons operating
25 sewerage systems in this state, shall file with the director of
26 public health a true copy of the plans and specifications of the
27 entire sewerage system owned or operated by that person,

1 including filtration or other purification plant or treatment
2 works as may be operated in connection with the sewerage system,
3 and also plans and specifications of all alterations, additions,
4 or improvements to the systems that may be made. The plans and
5 specifications shall, in addition to all other things, show all
6 the sources through or from which water is or may be at any time
7 pumped or otherwise permitted to enter into the sewerage system,
8 and the drain, watercourse, river, or lake into which sewage is
9 to be discharged. The plans and specifications shall be certi-
10 fied by the mayor and city engineer of a city, by the president
11 and engineer if employed for a village, and by the proper officer
12 and the engineer employed by any other governmental agency, asso-
13 ciation, or private corporation for the governmental agency,
14 association, or private corporation, and by an individual member
15 of a partnership, or by the individual owner of a sewerage system
16 owned and operated by a partnership or 1 or more individuals,
17 including the engineer employed, if any. Before constructing a
18 sewerage system, filtration, or other purification plant or
19 treatment works or any alteration, addition, or improvement to
20 the system or plant, the mayor of each city, the president of
21 each village and the responsible official of all other governmen-
22 tal agencies, associations, private corporations, and partner-
23 ships or individuals shall submit the plans and specifications to
24 the director of public health and secure from the director of
25 public health a permit for construction. The director of public
26 health may promulgate and enforce rules regarding the preparation
27 and submission of plans and specifications and for the issuance

1 and period of validity of construction permits for the work. A
2 contractor, builder, governmental agency, corporation, associa-
3 tion, partnership, or individual shall not engage in or commence
4 the construction of a sewerage system, filtration, or other puri-
5 fication plant or treatment works or an alteration, addition, or
6 improvement until a valid permit for the construction is secured
7 from the director of public health. An official of the govern-
8 mental agency, corporation, association, partnership, or individ-
9 ual shall not issue a voucher, check, or in any other way expend
10 the money of the governmental agency, corporation, association,
11 partnership, or individual for the construction unless a valid
12 permit, issued by the director of public health, is in effect.

13 (2) A municipal officer, officer or agent of a governmental
14 agency, corporation, association, partnership, or individual who
15 permits or allows construction to proceed on a sewerage works
16 without a valid permit, or in a manner not in accordance with the
17 plans and specifications approved by the director of public
18 health, is guilty of a misdemeanor.

19 Sec. 1906. (1) A person who operates a sewage treatment
20 works shall file with the director of public health reports under
21 oath as required by the director of public health. The reports
22 shall be sworn to by a responsible officer or person acquainted
23 with the facts and employed by the person required to report
24 under this part.

25 (2) A person making a false statement in a report under
26 subsection (1) is guilty of perjury and subject to the penalty
27 for that offense.

1 Sec. 1907. (1) The director of public health on receipt of
2 plans and specifications for a sewerage system shall inspect them
3 with reference to their adequacy to protect the public health,
4 and if the public water supply of the city or village is impure
5 and dangerous to individuals or to the public generally, he or
6 she shall inspect the sewerage systems or any parts of the sewer-
7 age system and the manner of its operation. If upon inspection
8 the director of public health finds the plans and specifications
9 or the sewerage systems are inadequate or operated in a manner
10 that does not adequately protect the public health, he or she may
11 order the person owning or operating the sewerage system to make
12 alterations in the plans and specifications or in the sewerage
13 systems or the method of operation of the sewerage system as may
14 be required or advisable in his or her opinion, in order that the
15 sewage is not potentially prejudicial to the public health.

16 (2) The recommendations or orders of the director of public
17 health shall be served in writing upon the owner or operator of
18 the sewerage system and the owner and operator shall comply with
19 the recommendations or orders.

20 Sec. 1908. The director of public health shall exercise due
21 care to see that sewerage systems are properly planned, con-
22 structed, and operated to prevent unlawful pollution of the
23 streams, lakes, and other water resources of the state. He or
24 she shall counsel owners and operators of sewerage systems or any
25 parts of sewerage systems when disputes between public agencies
26 over sewerage service or sewage treatment rates occur and may act
27 as arbitrator in these cases when called upon so to do by a

1 majority of the parties to the controversy. The director of
2 public health shall cooperate with appropriate federal or state
3 agencies in the determination of grants of assistance for the
4 preparation of plans for the construction of waterworks systems,
5 sewerage systems, or waste treatment projects.

6 Sec. 1909. The director of public health may employ engi-
7 neers, and other assistants as may be necessary, to administer
8 this part.

9 Sec. 1910. (1) A person who violates this part, or a writ-
10 ten order of the director of public health is guilty of a misde-
11 meanor and upon conviction shall be punished by imprisonment for
12 not more than 90 days, or a fine of not less than \$25.00 or more
13 than \$100.00, or both and costs of prosecution.

14 (2) Each day upon which a violation of this part occurs is a
15 separate and additional violation for the purpose of this part.

16 (3) The attorney general shall prosecute all cases arising
17 under this part, including the recovery of penalties.

18 Sec. 1911. The director of public health may bring an
19 appropriate action in the name of the people of this state as may
20 be necessary to carry out this part and to enforce any and all
21 laws, rules, and regulations relating to this part.

22 PART 21 WATERWORKS SYSTEMS, SEWERS, AND DISPOSAL PLANTS

23 Sec. 2101. A local unit of government in this state, either
24 individually or jointly by agreement with another local unit of
25 government, may own, acquire, construct, equip, operate, and
26 maintain either within or outside of the statutory or corporate
27 limits of the local unit or units of government, intercepting

1 sewers, other sanitary and storm sewers, pumping stations, and a
2 plant or plants for the treatment, processing, purification, and
3 disposal in a sanitary manner, approved by the department, of the
4 liquid and solid wastes, refuse, sewage and night soil, storm
5 water, and garbage of the local unit or units of government. A
6 local unit of government, either individually or jointly by
7 agreement with another local unit of government, may own,
8 acquire, construct, equip, operate, and maintain either within or
9 outside of the statutory or corporate limits of the local unit or
10 units of government waterworks systems approved by the department
11 of public health, including such facilities as water mains,
12 treatment works, source facilities, pumping stations, reservoirs,
13 storage tanks, and other appurtenances for the purpose of obtain-
14 ing, treating, and delivering pure and wholesome water in ade-
15 quate quantity to the local unit or units of government. They
16 may acquire by gift, grant, purchase, or condemnation necessary
17 lands, either within or outside of the statutory or corporate
18 limits of the local unit or units of government. However, a
19 township shall not condemn land outside its corporate limits.
20 For the purpose of acquiring property for the uses described in
21 this part, the local unit of government has all the rights,
22 powers, and privileges granted to "public corporations" under Act
23 No. 149 of the Public Acts of 1911, being sections 213.21 to
24 213.25 of the Michigan Compiled Laws. These powers are in addi-
25 tion to any powers granted to the local unit of government by
26 statute or charter.

1 Sec. 2102. The waterworks system, intercepting sewers,
2 pumping stations, sewage disposal plant and system, transfer
3 station, and garbage and refuse processing or disposal plant and
4 system, are public utilities within the meaning of any constitu-
5 tional or statutory provisions for the purpose of acquiring, pur-
6 chasing, owning, operating, constructing, equipping, and main-
7 taining the waterworks system, intercepting sewers, pumping sta-
8 tions, sewage disposal plant and system, transfer station, and
9 garbage and refuse processing or disposal plant and system. A
10 local unit of government may issue faith and credit bonds or
11 mortgage bonds for the purposes described in this part beyond the
12 general limits of the bonded indebtedness prescribed by law
13 except as provided in this section. The mortgage bonds as pro-
14 vided in this section shall not impose any general liability upon
15 the local unit of government but shall be secured only on the
16 property and revenues of the utility as provided in this section,
17 including a franchise stating the terms upon which the purchaser
18 may operate the utility in case of foreclosure. The franchise
19 shall not extend for a longer period than 20 years from the date
20 of the sale on foreclosure. The mortgage bonds shall be sold for
21 not less than par, bear interest at a rate not to exceed the max-
22 imum rate permitted by the municipal finance act, Act No. 202 of
23 the Public Acts of 1943, being sections 131.1 to 139.3 of the
24 Michigan Compiled Laws, and the total amount shall not exceed 60%
25 of the original cost of the utility except as provided in this
26 section. Bonds shall not be issued as general obligations of the
27 local unit of government except upon a 3/5 affirmative vote of

1 the qualified electors of the local unit of government and except
2 as provided in this section, not in excess of 3% of the assessed
3 valuation of the real and personal property of the local unit of
4 government as shown by the last preceding tax roll. Bonds shall
5 not be issued as faith and credit bonds or mortgage bonds of the
6 utility except upon a 3/5 affirmative vote of the legislative
7 body of the local unit of government.

8 Sec. 2103. The legislative body of a local unit of govern-
9 ment or the respective legislative bodies of the local units of
10 government who have agreed to jointly own and operate waterworks
11 systems, intercepting sewers, or sewage treatment plants, may
12 create a separate board or may designate certain officials of the
13 local unit or units of government, to have the supervision and
14 control of the waterworks systems, intercepting sewers, transfer
15 stations, or sewage and refuse and garbage processing or disposal
16 plants. The legislative body, respective legislative bodies, or
17 the board may make all necessary rules governing the use, opera-
18 tion, and control of the facilities and systems. The legislative
19 body or respective legislative bodies may establish just and
20 equitable rates or charges to be paid to them for the use of the
21 waterworks system or disposal or processing plant and system by
22 each person whose premises are served, and the rates or charges
23 may be certified to the tax assessor and assessed against the
24 premises served, and collected or returned in the same manner as
25 other county or municipal taxes are certified, assessed, col-
26 lected, and returned.

1 Sec. 2104. Bonds that are issued and secured by a mortgage
2 on the utility as provided in this part shall not be a general
3 obligation of the local unit of government, but shall be paid
4 only out of revenues received from the service charges as pro-
5 vided in section 1203, or from a sale of the property and fran-
6 chises under a foreclosure of the mortgage. If a service rate is
7 charged, a sufficient portion shall be set aside as a sinking
8 fund for the payment of the interest on the bonds, and the prin-
9 cipal of the bonds at maturity.

10 Sec. 2105. Instead of owning and operating a sewer system
11 and sewage disposal plant, transfer station, garbage or refuse
12 collection, processing, and disposal plant or system as provided
13 in section 2101, a local unit of government may grant a franchise
14 for a period not to exceed 30 years to a private corporation
15 organized under, or authorized by, the laws of this state to
16 engage in such business, to build, construct, own, and operate a
17 sewage or garbage and refuse processing or disposal system for
18 the purpose of receiving and treating sewage and night soil,
19 refuse, and garbage from the local unit or units of government.
20 The franchise may authorize the corporation to charge each person
21 owning property from which the sewage, refuse, or garbage is
22 received a fee determined to be reasonable by the public service
23 commission of this state, upon proper application made either by
24 the corporation or local unit or units of government, and after
25 holding a public hearing. The franchise may also grant to the
26 corporation the right and privilege to provide collection
27 services and to lay all intercepting and other sewers and

1 connecting pipes in the streets and public alleys of the local
2 unit or units of government as are necessary to receive, trans-
3 fer, and conduct the sewage, garbage, or refuse to the processing
4 or disposal plant and under reasonable rules, regulations, and
5 supervision as are established by the local unit or units of
6 government. The franchise is void unless approved by 3/5 of the
7 electors of the local unit or units of government voting at a
8 general or special election. This franchise shall not duplicate
9 existing private solid waste management services or facilities
10 that have been developed under part 63.

11 Sec. 2106. The local unit or units of government may enter
12 into a contract with a person to receive, treat, transfer, and
13 process in the manner provided in this part, the sewage, night
14 soil, garbage, and refuse of the local unit or units of
15 government. The contract may authorize the person to charge the
16 owners of the premises served a service rate determined by the
17 local unit or units of government to be just and reasonable, or
18 the local unit or units of government may contract to pay a flat
19 rate for the service, paid out of their general fund or funds, or
20 assess the owners of the property served a reasonable charge to
21 be collected as provided in this part and paid into a fund to be
22 used to defray the contract charges.

23 Sec. 2107. (1) In accordance with and to the extent autho-
24 rized by law, when the water resources commission, the department
25 or the department of public health has ordered, or when the water
26 resources commission has issued a permit for, or when a court of
27 competent jurisdiction in the state has ordered the installation,

1 construction, alteration, improvement, or operation of a sewage
2 system, solid waste facility, or waterworks system, in a local
3 unit of government, and the plans for the facility or system have
4 been prepared, and approved by the state department or commission
5 having the authority by law to grant the approval, the legisla-
6 tive body or the respective legislative bodies of the local unit
7 or units of government may issue and sell the necessary bonds for
8 the construction, installation, alteration, operation, or
9 improvement, including the treatment works, and other facilities
10 as may be ordered or set forth in the permit as being necessary
11 to provide for the effective operation of the system. This pro-
12 vision shall be construed to allow a local unit of government the
13 option of selling bonds under a water resources commission order
14 or permit, or a department order, or of taking or permitting the
15 matter to go into court and selling bonds under a court order.
16 The bonds shall bear interest at a rate not to exceed the maximum
17 rate permitted by the municipal finance act, Act No. 202 of the
18 Public Acts of 1943, being sections 131.1 to 139.3 of the
19 Michigan Compiled Laws, and be payable in not more than 40 years
20 from the date of issuance. The legislative body or the respec-
21 tive legislative bodies shall determine the denomination of the
22 bonds and the date, time, and manner of payment. The amount of
23 the bonds either issued or outstanding shall not be included in
24 the amount of bonds which the local unit or units of government
25 are authorized to issue under any statutes of this state or
26 charters. Local units of government issuing bonds under this
27 section may raise a sum annually by taxation as the legislative

1 body or respective legislative bodies consider necessary to pay
2 interest on the bonds, and to pay the principal as it falls due.
3 The annual amount may be in excess of the authorized annual tax
4 rate fixed by the statutes or charters.

5 (2) Except as otherwise provided in this part, all bonds
6 issued under this section shall be issued and sold in conformity
7 with Act No. 202 of the Public Acts of 1943. Court ordered bonds
8 do not require approval of the electors and are not subject to
9 section 5(g) of Act No. 279 of the Public Acts of 1909, being
10 section 117.5 of the Michigan Compiled Laws, as to publication of
11 notice, petition, and referendum. Bonds other than court ordered
12 bonds issued under this part require approval of the electors at
13 a general or special election only if an appropriate petition is
14 filed in accordance with the law.

15 Sec. 2108. If an order is made by a court of competent
16 jurisdiction pursuant to this part, the fact that the order was
17 issued shall be recited in the official minutes of the legisla-
18 tive body or the respective legislative bodies. The body or
19 bodies shall require that plans and specifications be prepared
20 for a waterworks, sewage, garbage, or refuse transfer, process-
21 ing, or disposal system, including the necessary other
22 facilities. After the plans are approved by the legislative body
23 or respective legislative bodies, they shall be submitted to the
24 department of public health or the department for approval. If
25 the plans are approved, the legislative body or respective legis-
26 lative bodies shall authorize the issuance and sale of the

1 necessary bonds to construct the proposed system or facilities in
2 accordance with the approved plans.

3 Sec. 2109. The authority given by this part is in addition
4 to and not in derogation of any power existing in any of the
5 local units of government under any statutory or charter provi-
6 sions which they may now have or may adopt.

7 Sec. 2110. Proceedings under this part shall be taken only
8 in a court of competent jurisdiction in the county in which the
9 proposed waterworks system, interceptors, sewage, garbage, or
10 refuse transfer, processing, or disposal plants are to be
11 constructed.

12 Sec. 2111. If considered expedient for the safety and
13 health of the people, local units of government may enter into
14 agreement with each other to raise money and issue bonds to erect
15 and maintain waterworks systems, intercepting sewers, sewage
16 treatment plants, or garbage or refuse transfer, processing, or
17 disposal systems.

18 Sec. 2112. If local units of government desire to act under
19 this part, the relationship established between such local units
20 of government shall be fixed by contract and such contracts may
21 be made by local units of government under this part in a manner
22 and to the extent that natural persons might make contracts for
23 like purposes. Such contracts before becoming operative shall be
24 approved by a vote of the majority of the members elect of each
25 of the respective legislative bodies of the local units of gov-
26 ernment operating under this part.

PART 23 WASTEWATER DISPOSAL

1
2 Sec. 2301. As used in this part, "land disposal wastewater
3 management program" means the program developed in the United
4 States army corps of engineers southeastern Michigan survey scope
5 wastewater management study, as authorized by section 102 of
6 title I of the federal water pollution control act, chapter 758,
7 86 Stat. 817, 33 U.S.C. 1252, and the resolution of the United
8 States house of representatives public works committee and the
9 United States senate public works committee or any other study by
10 the corps of engineers proposing disposal of municipal wastewater
11 on land.

12 Sec. 2302. Upon receipt of a proposal to implement a land
13 disposal wastewater management program as defined in this part by
14 a federal, state, or local unit of government, the water
15 resources commission shall submit to the governor, the legisla-
16 ture, and local units of government its views as to the environ-
17 mental consequences, cost effectiveness, and social acceptability
18 of the program. The department of agriculture shall present its
19 views to the governor, the legislature, and local units of gov-
20 ernment regarding the impact of the program on agriculture.

21 Sec. 2303. Upon receipt of the views of the water resources,
22 commission and the department of agriculture, the local units of
23 government shall either approve or disapprove by resolution, and
24 the legislature shall either approve or disapprove by concurrent
25 resolution, the implementation of the program.

1 PART 25 SEPTAGE WASTE SERVICERS

2 Sec. 2501. As used in this part:

3 (a) "Certified health department" means a city, county, or
4 district department of health to which the director has delegated
5 the authority to perform activities as prescribed by this part.6 (b) "Cesspool" means a cavity in the ground that receives
7 waste to be partially absorbed directly or indirectly by the sur-
8 rounding soil.9 (c) "Governmental unit" means a county, township, municipal-
10 ity, or other regional authority.11 (d) "Injection" means the pressurized placement of septage
12 waste below the surface of soil.13 (e) "Motor vehicle" means a vehicle that is self-propelled
14 and used to transport septage waste.15 (f) "Peace officer" means every sheriff or sheriff's deputy,
16 village or township marshal, officer of the police department of
17 any city, village, or township, any officer of the Michigan state
18 police, any peace officer who is trained and certified pursuant
19 to the Michigan law enforcement officers training council act of
20 1965, Act No. 203 of the Public Acts of 1965, being sections
21 28.601 to 28.616 of the Michigan Compiled Laws, or any conserva-
22 tion officer appointed by the director pursuant to section 6 of
23 Act No. 192 of the Public Acts of 1929, being section 300.16 of
24 the Michigan Compiled Laws.25 (g) "Person", as used in this part, does not include a local
26 unit of government, the state, or the federal government.

1 (h) "Portable toilet" means a receptacle for human waste
2 temporarily in a location for human use.

3 (i) "Public septage waste treatment facility" means a
4 septage waste or other wastewater treatment facility owned and
5 operated by a governmental unit and approved by the director for
6 treating septage waste.

7 (j) "Seepage pit" means a dry well, leaching pit, or any
8 other cavity in the ground that receives the liquid discharge of
9 a septic tank.

10 (k) "Septage waste" means any human excrement, other domes-
11 tic or restaurant waste, or other material or substance removed
12 from a portable toilet, septic tank, seepage pit, cesspool,
13 sewage lift station, or other enclosure as determined by the
14 director under section 2518, but does not include liquid indus-
15 trial waste regulated under part 71.

16 (l) "Septic tank" means a septic toilet, chemical closet, or
17 other enclosure used for the storage or decomposition of septage
18 waste.

19 (m) "Service" or "servicing" means cleaning, removing,
20 transporting, or disposing of septage waste from a portable
21 toilet, septic tank, seepage pit, cesspool, sewage lift station,
22 or other enclosure as determined by the director under section
23 2518.

24 (n) "Sewage lift station" means a pumping facility that
25 lifts septage waste to a higher elevation.

1 (o) "Site" means a location that has been approved by the
2 director as a suitable location for the disposal of septage
3 waste.

4 (p) "Tank" means a container placed on a motor vehicle to
5 carry or transport septage waste.

6 Sec. 2502. (1) Except as otherwise provided in this sec-
7 tion, a person shall not engage in the business of servicing, or
8 contract with a person to service, a portable toilet, septic
9 tank, seepage pit, cesspool, or other enclosure as determined by
10 the director under section 2518, unless the person who will per-
11 form the servicing is licensed as provided in sections 2503 and
12 2504.

13 (2) Licensure, as provided in this part, is not required for
14 a real property owner who services his or her own portable
15 toilet, septic tank, seepage pit, cesspool, sewage lift station,
16 or other enclosure as determined by the director under section
17 2518 located on that person's property. Septage waste removed by
18 a real property owner pursuant to this subsection may be disposed
19 of on the real property from which it originates, if the real
20 property is at least 20 acres in size, and if the disposal is in
21 compliance with sections 2510, 2511, and 2514, and any rules
22 promulgated under this part pertaining to the disposal of septage
23 waste.

24 (3) The license requirements provided in this part are not
25 applicable to a public septage waste treatment facility.

26 Sec. 2503. (1) A person engaged in the business of
27 servicing shall apply for a septage waste servicing license on an

1 application form provided by the department. The department
2 shall provide an application form that includes all of the
3 following:

4 (a) The applicant's name and mailing address.

5 (b) The location or locations where the business is
6 operated.

7 (c) Additional information pertinent to this part as
8 required by the director.

9 (2) A person who submits a completed application form under
10 subsection (1) shall submit to the department with the applica-
11 tion all of the following:

12 (a) An application fee of \$300.00, that will be refunded by
13 the department if a septage waste servicing license is not
14 issued.

15 (b) A \$100.00 fee to accompany an initial license applica-
16 tion to be credited to the septage waste site contingency fund as
17 provided in section 2517.

18 (c) Written approval from all public septage waste treatment
19 facilities where the applicant plans to dispose of septage waste
20 and the locations where the applicant plans to dispose of septage
21 waste upon receiving the department's approval, and either proof
22 of ownership of the proposed disposal location or written
23 approval from the site owner.

24 (3) A person who holds a septage waste servicing license
25 shall maintain at all times at his or her place of business a
26 complete record of the amount of septage waste that the person
27 has transported and disposed of and the location at which the

1 disposal of septage waste has occurred. The person shall display
2 these records upon the request of the director, a peace officer,
3 or an official of a certified health department.

4 Sec. 2504. (1) A person who is required to be licensed pur-
5 suant to section 2503 is required to have a septage waste motor
6 vehicle license issued by the department for each vehicle that is
7 used to transport septage waste. A septage waste motor vehicle
8 license application form shall be provided by the department and
9 shall be submitted to the department with a license fee of \$75.00
10 for each vehicle required to be licensed under this part. A
11 motor vehicle license application is to include all of the fol-
12 lowing information:

13 (a) The model and year of the motor vehicle.

14 (b) The capacity of any tank used to remove or transport the
15 septage waste.

16 (c) The name of the motor vehicle's insurance carrier.

17 (d) Additional information pertinent to this part as
18 required by the director.

19 (2) A person who is issued a septage waste motor vehicle
20 license issued pursuant to this section shall carry that license
21 at all times in the motor vehicle that is described in that
22 license and display the license upon the request of the director,
23 a peace officer, or an official of a certified health
24 department.

25 (3) Without the express permission of the director, a person
26 shall not use a vehicle used to transport septage waste to

1 transport hazardous waste regulated under part 61, or liquid
2 industrial waste regulated under part 71.

3 Sec. 2505. A tank upon a vehicle licensed pursuant to sec-
4 tion 2504 shall be closed in transit to prevent the release of
5 septage waste and odor. The motor vehicle, tank, and accessory
6 equipment shall be clean and maintained in a manner that prevents
7 environmental damage or harm to the public health.

8 Sec. 2506. (1) Upon receipt of application forms complying
9 with sections 2503 and 2504, the department shall review each
10 application to insure that it is complete. If the department
11 determines that the application forms are complete, the depart-
12 ment shall promptly provide the applicable certified health
13 department with copies of all application materials. Upon
14 receipt of the application materials, a certified health depart-
15 ment shall conduct all necessary investigations to verify that
16 the locations to be used for disposal, the servicing methods, and
17 the motor vehicles and tanks are in compliance with this part and
18 the rules promulgated under this part. Upon approving of the
19 applicant, the director shall issue a license as provided in sec-
20 tions 2503 and 2504. If a certified health department does not
21 exist, the department may perform the functions of a certified
22 health department as necessary.

23 (2) A license issued pursuant to section 2503 or 2504 is not
24 transferable and is valid for 3 years unless revoked or suspended
25 by the director.

26 Sec. 2507. Each motor vehicle licensed pursuant to section
27 2504 shall display on both sides of the motor vehicle in letters

1 not less than 2 inches high the words "licensed septage hauler",
2 the motor vehicle license number issued by the department, and a
3 seal furnished by the department that designates the year the
4 license was issued.

5 Sec. 2508. A person licensed under this part shall deposit
6 all septage waste in a public septage waste treatment facility if
7 a facility is available to receive that septage waste and is
8 located within 15 road miles of the location where the septage
9 waste is received. This section does not restrict a licensed
10 person from taking septage waste to any public septage waste
11 treatment facility, regardless of where that facility is
12 located. The public septage waste treatment facility may charge
13 a disposal fee that does not exceed the actual costs related to
14 the treatment and storage of the waste.

15 Sec. 2509. (1) Subject to the limitations contained in sec-
16 tions 2510 and 2511, septage waste that is picked up at a loca-
17 tion that is further than 15 road miles from a public septage
18 waste treatment facility, or where a public waste treatment
19 facility is not available, may be disposed of on land if the
20 person holding licenses issued pursuant to sections 2503 and 2504
21 applies to the director for a permit authorizing the disposal of
22 septage waste on land, supplies any additional information perti-
23 nent to this part as required by the director, and sends notice
24 to property owners as provided in subsection (2).

25 (2) An applicant for a permit under subsection (1) shall
26 send a notice to each land owner who owns property located within
27 800 feet of the proposed disposal location on a form approved by

1 the department. Service of the notice shall be made by first
2 class mail. The notification shall include the nature of the
3 proposed land use, the location of the proposed disposal area,
4 and whom to contact if there is an objection to the proposed land
5 use. A copy of the notice that is mailed to each property owner
6 shall be sent to the certified health department having
7 jurisdiction. If no substantiated objections as determined by
8 the director are received within 10 business days following the
9 mailing of the notification, the director may issue a permit as
10 provided in this section. If the director finds that the appli-
11 cant is unable to provide notice as required in this subsection,
12 the department may waive the notice requirement or allow the
13 applicant to use a substitute means of providing notice.

14 (3) A permit issued under this section shall expire at the
15 same time as a septage waste servicing license issued pursuant to
16 section 2503, but is subject to renewal at that time. A permit
17 issued under this section may be revoked by the director if
18 septage waste disposal or site management is in violation of this
19 part or the rules promulgated pursuant to this part.

20 Sec. 2510. Except as provided in section 2511, a permit
21 issued pursuant to section 2509 is subject to the following
22 requirements:

23 (a) The quantity of septage waste disposed of shall be
24 applied uniformly at a rate no greater than 15,000 gallons per
25 acre per month and not greater than 60,000 gallons per acre per
26 year. Land may be utilized as a septage waste disposal site for
27 a period not to exceed 20 years.

(b) Not more than 1 person licensed under this part may use a site for the disposal of septage waste during any year.

(c) Septage waste shall be mixed into the soil within 48 hours of any surface application unless the soil is frozen and the requirements of section 2511 are met.

(d) Septage waste may be disposed of by surface or injection application only if the horizontal distance from the applied septage waste and the items listed in subdivisions (i) to (iv) equals or exceeds the following isolation distances:

		<u>TYPE OF APPLICATION</u>	
		<u>Surface</u>	<u>Injection</u>
(i)	Homes or commercial buildings	800 feet	150 feet
(ii)	Private drinking water wells	800 feet	150 feet
(iii)	Surface water	500 feet	150 feet
(iv)	Roads or property lines	200 feet	150 feet

(e) The slope of any lands on which septage waste is applied to the surface of that land does not exceed 6% and the slope of land on which septage waste is injected does not exceed 12%.

(f) Septage waste shall not be applied to any land unless the water table is at least 30 inches below any applied septage waste.

(g) Septage waste shall be treated to reduce pathogens prior to land disposal by aerobic or anaerobic digestion, lime stabilization, composting, air drying, or other process or method approved by the director, unless public access to the site is restricted for 12 months and no animals whose products are

1 consumed by humans are allowed to graze on the site for at least
2 1 month following disposal.

3 (h) Septage waste shall be treated to reduce pathogens by
4 composting, heat drying or treatment, thermophilic aerobic diges-
5 tion, or other process or method approved by the director prior
6 to disposal on lands where crops for direct human consumption are
7 grown, if contact between the septage waste and the edible por-
8 tion of the crop is possible.

9 (i) Vegetation shall be grown on a septage waste disposal
10 site each year that septage waste is disposed of on that site.

11 Sec. 2511. (1) The director may approve of surface applica-
12 tion of septage waste when the soil is frozen and the following
13 requirements are met:

14 (a) Melting snow does not result in the runoff of septage
15 waste from the site.

16 (b) The slope of the land is less than 2% or less than 4% if
17 the land is internally drained.

18 (c) Less than 10,000 gallons per acre per year is applied.

19 (d) The United States department of agriculture defines the
20 soil as well-drained, moderately well-drained, somewhat
21 poorly-drained, or poorly-drained if the director finds that the
22 poorly-drained soil is systematically tiled or specifies other
23 reasons for approving surface application.

24 (2) The director may grant a variance from the requirements
25 of section 2510(d), (e), or (f) or subsection (1) if the director
26 finds that the conditions of the variance provide the same or a
27 higher degree of protection to the environment and the public

1 health as provided in section 2510(d), (e), or (f) or subsection
2 (1).

3 (3) The director may grant a variance to the requirements of
4 section 2510(a) if it can be demonstrated that no adverse impact
5 will affect the soil, groundwater, surface water, or public
6 health and safety as a result of the variance.

7 (4) The director may grant a variance to the requirements of
8 section 2510(c) if all the following conditions are present:

9 (a) Septage waste is applied at a rate no greater than
10 10,000 gallons per acre per month and not greater than 60,000
11 gallons per acre per year.

12 (b) The site of the septage waste disposal has a permanent
13 vegetative cover and the disposal does not have a detrimental
14 impact on products grown on the land or on animals being fed
15 these products.

16 (c) The slope of any lands on which septage waste is applied
17 is less than 2%, or 4%, if internally drained.

18 (d) The septage waste is applied in a manner that prevents
19 the accumulation and ponding of septage waste.

20 (e) The soil is properly tilled at least once every 2 years
21 to prevent an accumulation of solids forming at the soil
22 surface.

23 (f) The application area is located no closer than 1,000
24 feet to homes or commercial buildings, except for homes located
25 on the same property as the septage disposal site and occupied by
26 the owner of the septage waste disposal site.

1 (g) All other provisions and isolation distances stated in
2 section 2510(d) are complied with.

3 Sec. 2512. The standards provided for in sections 2510 and
4 2511 may be modified by rules promulgated by the department, pro-
5 vided that if the rules provide the same or a higher degree of
6 protection to the environment and the public health as provided
7 in sections 2510 and 2511.

8 Sec. 2513. The director shall inspect a septage waste dis-
9 posal site at least once each year.

10 Sec. 2514. A person shall not dispose of septage waste in a
11 lake, pond, stream, river, or other body of water.

12 Sec. 2515. (1) If a governmental unit requires that all
13 septage waste collected in that governmental unit be disposed of
14 in a septage waste treatment facility or prohibits, or effec-
15 tively prohibits, the application of septage waste to land within
16 that governmental unit, the governmental unit shall make avail-
17 able a public septage waste treatment facility that can lawfully
18 accept all septage waste generated within that governmental unit
19 that is not lawfully applied to land.

20 (2) The owner or operator of a public septage waste treat-
21 ment facility shall not require the posting of a surety, includ-
22 ing cash in an escrow account or a performance bond, to dispose
23 of septage waste in the public septage waste treatment facility.

24 Sec. 2516. (1) The director shall certify city, county, and
25 district departments of health to carry out certain responsibili-
26 ties under this part. Except as provided in section 2517 and
27 subsection (2), the department shall provide for the payment of

1 all fees collected under this part to certified health
2 departments that carry out responsibilities under this part.

3 (2) A certified health department that carries out responsi-
4 bilities under this part may assess a fee to cover the actual
5 costs incurred by the certified health department in fulfilling
6 its responsibilities under this part.

7 (3) If a certified health department does not exist in a
8 city, county, or district or does not fulfill its responsibili-
9 ties pursuant to this part, the department may carry out those
10 responsibilities it considers necessary. The department shall
11 retain the fees collected under this part that would have been
12 paid to the certified health department had it existed or ful-
13 filled its responsibilities pursuant to this part.

14 Sec. 2517. There is created in the state treasury a septage
15 waste site contingency fund. The contingency fund shall be
16 financed by a \$100.00 fee collected from each person who holds a
17 septage waste servicing license under this part. The fee shall
18 be collected from a person holding a license under section 2503
19 with the first application and shall not be collected with subse-
20 quent renewal licenses. The fees shall be deposited in the state
21 treasury to the credit of the septage waste site contingency
22 fund. The director shall administer the fund and authorize
23 expenditures to remove or treat septage waste which has been dis-
24 posed of in violation of this part. Following an expenditure
25 from the fund, the director immediately shall request that the
26 attorney general begin proceedings to recover the expenditure
27 from the fund from the person responsible for the damage.

1 Interest earned by the fund shall remain in the fund unless
2 expended as provided in this section.

3 Sec. 2518. The director may promulgate rules to implement
4 this part. The rules may include rules establishing other mate-
5 rials and substances that are included in the definition of
6 septage waste and other enclosures for septage waste that require
7 licenses to service under this part.

8 Sec. 2519. (1) A person who violates this part, a condition
9 of a license or permit issued under this part, or who makes false
10 statements to obtain a license under this part is guilty of a
11 misdemeanor, punishable by imprisonment for not more than 10
12 days, or a fine of not more than \$500.00, or both. If the viola-
13 tion is of a continuing nature, each day the violation occurs is
14 a separate offense.

15 (2) If the director finds that a person is in violation of a
16 license, permit, or a requirement of this part, pursuant to the
17 administrative procedures act of 1969, Act No. 306 of the Public
18 Acts of 1969, being sections 24.201 to 24.328 of the Michigan
19 Compiled Laws, the director may revoke, suspend, or modify the
20 license or permit.

21 (3) Upon receipt of information that the servicing of
22 septage waste regulated by this part presents an imminent or sub-
23 stantial threat to the public health, safety, welfare, or the
24 environment, after consultation with the director or a designated
25 representative of the department of public health, the director,
26 or a peace officer if authorized by law, shall do 1 or more of
27 the following:

1 (a) Summarily suspend a license pursuant to the
2 administrative procedures act of 1969, Act No. 306 of the Public
3 Acts of 1969, and afford the holder of the license an opportunity
4 for a hearing within 7 days.

5 (b) Request that the attorney general commence an action to
6 enjoin the act or practice and obtain injunctive relief upon a
7 showing that a person is or has removed, transported, or disposed
8 of septage waste in a manner that is or may become injurious to
9 the public health, safety, welfare, or the environment.

10 (c) Seize a vehicle, equipment, or other property used or
11 operated in a manner or for a purpose contrary to this part or
12 contrary to a license or permit issued under this part. A holder
13 of a license or permit whose property is seized pursuant to this
14 section shall be afforded an opportunity for a hearing within 7
15 days pursuant to the administrative procedures act of 1969, Act
16 No. 306 of the Public Acts of 1969.

17 (4) If the director determines that hazardous or nuisance
18 conditions or unlawful pollution of the waters of the state has
19 resulted or may result from the activities of a person who holds
20 a license, the director shall notify the holder of that license
21 and afford the license holder the opportunity to take corrective
22 action to abate or prevent the pollution.

23 PART 27 CONTAMINATION OF WATERS

24 Sec. 2701. All fish, offal, or filth of any description
25 accruing from the catching and curing of fish, shall be burned or
26 buried at least 10 rods from the beach or shore of any stream,
27 pond, or lake.

1 Sec. 2702. Upon receipt of an application by a person who
2 is not a resident of this state for a license to use a pound or
3 trap net and payment of a \$50.00 fee for each trap net, the
4 county board of commissioners of each county, or a majority of
5 the county board of commissioners, shall grant written permission
6 to the nonresident applicant for 1 year, to use 1 or more pound
7 or trap nets within the water of this state. A person who vio-
8 lates this section is responsible for a civil fine of \$100.00 and
9 the costs of suit. The county board of commissioners, or a
10 majority of them, shall enforce this part. Money accruing from
11 fees and civil fines under this part shall be paid to the county
12 treasurer.

13 Sec. 2703. (1) A person shall not put into the waters of
14 this state any sand, coal, cinders, ashes, log slabs, decayed
15 wood, bark, sawdust, or filth.

16 (2) A person shall not run into or molest any pound net,
17 trap net, or other stationary net or fixture set in any lake for
18 fishing purposes.

19 Sec. 2704. A person who violates this part is guilty of a
20 misdemeanor, punishable by imprisonment for not more than 90 days
21 or a fine of not more than \$100.00, or both. In addition, a
22 person who violates this part is liable civilly for damages done
23 in an action in any court having jurisdiction.

24 Sec. 2705. A person shall not willfully cut, tear, untie,
25 remove, or in any manner injure, damage, molest, or destroy a
26 net, rope, line, stake, anchor, or other property belonging to,
27 in use, or to be used in any pound net or trap net or other net

1 or fixture that is lawfully set and used to take fish from any of
2 the waters of this state. A person who violates this section is
3 guilty of a misdemeanor punishable by imprisonment for not more
4 than 6 months or a fine of not more than \$500.00, or both. In
5 addition, the person is liable civilly for all damages done will-
6 fully to the property to the legal owners or occupants of the
7 property. An action filed under this section may be filed in a
8 court of proper jurisdiction in the county where the property is
9 located.

10 PART 29 WATERCRAFT POLLUTION CONTROL

11 Sec. 2901. As used in this part:

12 (a) "Approved holding tank" means a holding tank certified
13 by the United States coast guard under part 159 of subchapter O
14 of chapter I of title 33 of the code of federal regulations, 33
15 C.F.R. part 159.

16 (b) "Discharge" means spilling, leaking, pumping, pouring,
17 emitting, emptying, or dumping.

18 (c) "Docking facility" means a public, private, or commer-
19 cial marina, yacht club, dock, or wharf used for mooring, serv-
20 ing, or otherwise handling watercraft.

21 (d) "Litter" means rubbish, refuse, waste material, garbage,
22 offal, paper, glass, cans, bottles, trash, debris, oil, or other
23 foreign substances of every kind and description.

24 (e) "Marine sanitation device" means equipment designed for
25 installation on board a watercraft or installed on board a water-
26 craft to receive, retain, treat, or discharge sewage.

1 (f) "Oil" means oil of any kind or in any form, including
2 petroleum, fuel oil, sludge, and oil refuse.

3 (g) "Police officer" means a police officer as defined in
4 section 42 of the Michigan vehicle code, Act No. 300 of the
5 Public Acts of 1949, being section 257.42 of the Michigan
6 Compiled Laws, and a conservation officer.

7 (h) "Portable" means not permanently affixed to a watercraft
8 and capable of being immediately removed from a watercraft.

9 (i) "Sewage" means human body wastes, treated or untreated.

10 (j) "Watercraft" means a contrivance used or capable of
11 being used for navigation upon water, whether or not capable of
12 self-propulsion, including foreign and domestic vessels engaged
13 in commerce upon the waters of this state, passenger or other
14 cargo-carrying vessels and privately owned recreational
15 watercraft.

16 (k) "Waters of this state" means waters within the territo-
17 rial limits of this state including the waters of the Great Lakes
18 that are under the jurisdiction of this state.

19 Sec. 2902. (1) A person shall not place, throw, deposit,
20 discharge, or cause to be discharged into or onto the waters of
21 this state, any litter, sewage, oil, or other liquid or solid
22 materials that render the water unsightly, noxious, or otherwise
23 unwholesome so as to be detrimental to the public health or wel-
24 fare or to the enjoyment of the water for recreational purposes.

25 (2) A person shall not discharge, dump, throw, or deposit
26 garbage, litter, sewage, or oil from a recreational, domestic, or
27 foreign watercraft used for pleasure or for the purpose of

1 carrying passengers, cargo, or otherwise engaged in commerce on
2 the waters of this state.

3 Sec. 2903. (1) Except as otherwise provided in this sec-
4 tion, a person shall not moor or operate a watercraft, or permit
5 the mooring or operation of his or her watercraft, on the waters
6 of this state if the watercraft has a marine sanitation device,
7 unless the marine sanitation device is equipped with 1 or more of
8 the following pollution control devices:

9 (a) An approved holding tank that will retain all sewage
10 produced on the watercraft for subsequent disposal at approved
11 dockside or onshore collection and treatment facilities.

12 (b) An incinerating device that will reduce to ash all
13 sewage produced on the watercraft. The ash shall be disposed of
14 onshore in a manner that will preclude pollution.

15 (2) Except as otherwise provided in this section, a person
16 shall not moor or operate a watercraft on the waters of this
17 state if the watercraft has a marine sanitation device that is
18 equipped with any type of bypass connection, pump, or other means
19 of directly or indirectly discharging sewage into the waters of
20 this state, unless the bypass connection, pump, or other device
21 has been rendered incapable of directly or indirectly discharging
22 sewage into the waters of this state. This subsection does not
23 prohibit a properly installed discharge line used to empty a
24 holding tank or retention device at an onshore sewage pump-out
25 station, or prohibit the use of a portable marine sanitation
26 device. A bypass connection, pump, or other device shall be

1 rendered incapable of directly or indirectly discharging sewage
2 into the waters of this state by 1 of the following methods:

3 (a) Removing a section of the pipe or tubing that allows
4 discharge of sewage into the waters of this state, placing a cap
5 over the pipe or tubing that remains attached to the marine sani-
6 tation device, and placing a seal approved by the department over
7 the cap in a manner that precludes reattaching the pipe or tubing
8 without breaking the seal. To comply with the requirements of
9 this subsection, the seal must be unbroken at the time an inspec-
10 tion occurs.

11 (b) Closing a valve that will prevent all discharge of
12 sewage into the waters of the state, and placing a seal approved
13 by the department over the valve handle in a manner that pre-
14 cludes reopening the valve without breaking the seal. To comply
15 with the requirements of this subsection, the seal must be unbroke-
16 n at the time an inspection occurs.

17 (3) The department, by rule, may exempt certain oceangoing
18 watercraft from the requirements of this section.

19 (4) If the department or its designee conducts an inspection
20 to determine whether a watercraft is in compliance with this sec-
21 tion and finds that the watercraft is in compliance, the depart-
22 ment or its designee shall place a sticker on the watercraft that
23 lists the date that the watercraft was inspected. The department
24 or its designee shall not inspect a watercraft for compliance
25 with this section more than once per year except upon probable
26 cause.

1 Sec. 2904. (1) Except as otherwise provided in this
2 section, all docking facilities shall provide pump-out facilities
3 approved by the department of public health for marine sanitation
4 device holding tanks on the watercraft. All pump-out facility
5 plans and installations shall be approved by the department of
6 public health or its authorized representative.

7 (2) An existing docking facility that would otherwise be
8 required by this section to have pump-out facilities is not
9 required to have those facilities if it has a contract to use,
10 and does use, the pump-out facilities of a docking-facility in
11 the vicinity. A contract between docking facilities under this
12 subsection shall be approved by the department. This subsection
13 does not apply to any docking facility that is constructed after
14 May 1, 1990, or whose capacity is expanded by a cumulative amount
15 exceeding 25%, or more than 15 slips, whichever is less, of the
16 capacity existing on May 1, 1990.

17 (3) A docking facility that is constructed after May 1, 1990
18 or whose capacity is expanded by a cumulative amount exceeding
19 25%, or more than 15 slips, whichever is less, of the capacity
20 existing on May 1, 1990 shall provide pump-out facilities as
21 required by this part.

22 (4) A docking facility that has a capacity of 15 watercraft
23 or less is exempt from the requirement of subsection (1).

24 (5) A docking facility holding only small watercraft of a
25 type not equipped with a marine sanitation device is exempt from
26 the requirements of subsection (1).

1 Sec. 2905. (1) A person shall not discharge or permit the
2 discharge of oil from a watercraft or a docking facility into or
3 onto the waters of this state.

4 (2) The owner or operator of a watercraft who, whether
5 directly or through any person concerned in the operation, navi-
6 gation, or management of the watercraft, discharges, permits, or
7 causes or contributes to the discharge of oil into or onto the
8 waters of this state or adjoining shorelines or beaches shall
9 immediately remove the oil from the waters, shorelines, or
10 beaches. If the state removes the oil that was discharged from
11 the watercraft, the owner or operator, or both, are liable to the
12 state for the full amount of the costs reasonably incurred for
13 its removal. The state may bring action against the owner or
14 operator, or both, to recover such costs in any court of compe-
15 tent jurisdiction.

16 Sec. 2906. All watercraft moored, operated, or located upon
17 the waters of this state are subject to inspection by the water
18 resources commission, any lawfully designated agent or inspector
19 of the water resources commission, or any peace, conservation, or
20 police officer for the purpose of determining if the watercraft
21 is equipped in compliance with the requirements of this part.
22 The water resources commission may inspect marinas and other
23 waterside facilities used by watercraft for launching, docking,
24 or mooring purposes to determine if they are equipped with trash
25 receptacles, sewage disposal equipment or both. Commercial docks
26 and wharfs designed for receiving and loading cargo or freight,
27 or both, from commercial watercraft shall furnish facilities, if

1 determined necessary, as prescribed by the water resources
2 commission, to accommodate discharge of sewage from heads and
3 galleys, and for deposit of litter, garbage, trash, or bilge
4 waters from the watercraft that utilize the docks or wharfs.

5 Sec. 2907. The state fully reserves to itself the exclusive
6 right to establish requirements with reference to the disposal or
7 discharge of sewage, litter, and oil from all watercraft. In
8 order to assure statewide uniformity, the regulation by any
9 political subdivision of the state of waste disposal from water-
10 craft is prohibited.

11 Sec. 2908. (1) The department may promulgate rules that are
12 necessary or convenient to carry out this part.

13 (2) The department of public health may promulgate rules
14 necessary for the regulation of docking facility water supplies
15 and sewage systems, pump-out facilities, and dockside sanitary
16 facilities.

17 (3) Before promulgating a rule under this section, the
18 department or the department of public health shall appoint and
19 consult with an advisory committee that is representative of the
20 major interests affected by the proposed rule.

21 Sec. 2910. A person who violates this part or the rules
22 promulgated under this part is guilty of a misdemeanor, punish-
23 able by imprisonment for not more than 92 days, or a fine of not
24 more than \$500.00, or both.

25 PART 31 PHOSPHATE CONTROL

26 Sec. 3101. (1) As used in this part:

1 (a) "Cleaning agent" means a laundry detergent, dishwashing
2 compound, household cleaner, metal cleaner, degreasing compound,
3 commercial cleaner, industrial cleaner, phosphate compound, or
4 other substance intended to be used for cleaning purposes.

5 Cleaning agent does not include any of the following:

6 (i) A cleaner, rinsing aid, or sanitizing agent intended
7 primarily for use in commercial machine dishwashers with not more
8 than 14% phosphorus.

9 (ii) A cleaner for food processing with not more than 14%
10 phosphorus.

11 (iii) A cleaner for industrial uses with not more than 28%
12 phosphorus.

13 (b) "Nutrient" means a substance or combination of sub-
14 stances that, when added to the waters of this state in a suffi-
15 cient quantity, provide nourishment that promotes the growth of
16 aquatic vegetation in the waters to such a density as to inter-
17 fere with or be detrimental to use of the waters by human beings
18 or by an animal, fish, or plant useful to human beings.

19 (c) "Water conditioner" means a water softening chemical,
20 antiscald chemical, corrosion inhibitor, or other substance
21 intended to be used to treat water.

22 (2) Notwithstanding any other provision of this part:

23 (a) A person shall not sell or distribute for use in this
24 state a cleaner, rinsing aid, or sanitizing agent intended pri-
25 marily for use in commercial automatic or commercial machine
26 dishwashers that contains phosphorus in excess of 14% by weight
27 expressed as elemental phosphorus.

1 (b) A person shall not sell or distribute for use in this
2 state a cleaner, rinsing aid, or sanitizing agent intended pri-
3 marily for use in dairy agricultural and farm operations, and in
4 the manufacture, preparation, and processing of foods and food
5 products including those used in dairy, beverage, egg, fish,
6 brewery, poultry, meat, fruit, and vegetable processing that con-
7 tains phosphorus in excess of 14% by weight expressed as elemen-
8 tal phosphorus.

9 (c) A person shall not sell or distribute for use in this
10 state a metal cleaner, metal brightener, metal treatment com-
11 pound, conversion coating agent, corrosion remover, paint remov-
12 er, rust inhibitor, etchant, phosphatizer, degreasing compound,
13 industrial cleaner, or commercial cleaner intended primarily for
14 use in industrial and manufacturing processes that contains phos-
15 phorus in excess of 28% by weight expressed as elemental
16 phosphorus.

17 Sec. 3102. A person shall not sell or distribute for use in
18 this state a cleaning agent that contains phosphorus in any form
19 in excess of 8.7% by weight expressed as elemental phosphorus.

20 Sec. 3103. The water resources commission shall promulgate
21 rules to implement this part. The rules may further restrict the
22 nutrient content and other contents of cleaning agents and water
23 conditioners, to prevent unlawful pollution and control nuisance
24 growths of algae, weeds, and slimes that are or may become inju-
25 rious to other lawful water uses, to prevent cleaning agents and
26 water conditioners, separately or in combination with other
27 substances, from rendering or tending to render any waters of

1 this state harmful or inimical to public health, or to animal or
2 aquatic life, or to beneficial water uses, and to minimize any
3 hazard to the health or safety of users of the cleaning agents or
4 water conditioners. The burden of proof is on a manufacturer of
5 a cleaning agent or water conditioner, before distribution for
6 sale or use in this state, to establish that its contents comply
7 with this part and rules promulgated under this part, and will
8 not or is not likely to adversely affect human health or the
9 environment. A person shall not sell or distribute for use in
10 this state-a cleaning agent or water conditioner in violation of
11 a rule promulgated under this part.

12 Sec. 3104. A person shall not sell detergents or cleaning
13 compounds containing any substance other than phosphorus that may
14 cause unlawful pollution of the waters of the state when dis-
15 charged into the waters of the state, if the water resources com-
16 mission determines that the other substance will cause unlawful
17 pollution under the circumstances of its expected use and dis-
18 posal or will pose a hazard to human health and safety. A deter-
19 mination by the water resources commission does not limit,
20 restrain, or in any way affect an action as it finds appropriate
21 under part 11. The water resources commission may establish by
22 rule the criteria by which it will determine the possible pollu-
23 tional effect of any substance. This part does not apply to a
24 detergent or cleaning compound contained in fuel or lubricating
25 oil.

26 Sec. 3105. A local unit of government shall not enact or
27 enforce an existing or future ordinance or rule with respect to

1 the sale of cleaning agents containing phosphorus or any other
2 substance that is or may be regulated under this part.

3 Sec. 3106. The water resources commission shall enforce
4 this part and seek court enforcement of its orders pursuant to
5 part 11.

6 PART 33 LITTERING

7 Sec. 3301. As used in this part:

8 (a) "Litter" means all rubbish, refuse, waste material, gar-
9 bage, offal, paper, glass, cans, bottles, trash, debris, or other
10 foreign substances.

11 (b) "Public or private property or water" includes, but is
12 not limited to, any of the following:

13 (i) The right of way of a road or highway, a body of water
14 or watercourse, or the shore or beach of the body of water or
15 watercourse, including the ice above the water.

16 (ii) A park, playground, building, refuge, or conservation
17 or recreation area.

18 (iii) Residential or farm properties or timberlands.

19 (c) "Vehicle" means every motor vehicle registered under the
20 Michigan vehicle code, Act No. 300 of the Public Acts of 1949,
21 being sections 257.1 to 257.923 of the Michigan Compiled Laws.

22 (d) "Vessel" means a vessel registered under the marine
23 safety act, Act No. 303 of the Public Acts of 1967, being sec-
24 tions 281.1001 to 281.1199 of the Michigan Compiled Laws.

25 Sec. 3302. (1) A person shall not knowingly, without the
26 consent of the public authority having supervision of public
27 property or the owner of private property, dump, deposit, place,

1 throw, or leave, or cause or permit the dumping, depositing,
2 placing, throwing, or leaving of, litter on public or private
3 property or water other than property designated and set aside
4 for such purposes.

5 (2) A person who removes a vehicle that is wrecked or dam-
6 aged in an accident on a highway, road, or street shall remove
7 all glass and other injurious substances dropped on the highway,
8 road, or street as a result of the accident.

9 Sec. 3303. (1) A person shall not knowingly cause litter or
10 any object to fall or to be thrown into the path of or to hit a
11 vehicle traveling upon a highway.

12 (2) A person who violates this section is guilty of a misde-
13 meanor, punishable by imprisonment for not more than 1 year, or a
14 fine of not more than \$500.00, or both.

15 Sec. 3304. (1) A person who violates this part is guilty of
16 a misdemeanor, punishable by imprisonment for not more than 90
17 days, or a fine of not more than \$400.00 and costs of prosecu-
18 tion, or both. The court, in lieu of any other sentence imposed,
19 may direct a substitution of litter-gathering labor, including,
20 but not limited to, the litter connected with the particular vio-
21 lation, under the supervision of the court.

22 (2) Except as provided in subsection (4) involving litter
23 from a leased vehicle or leased vessel, in a proceeding for a
24 violation of this part involving litter from a motor vehicle or
25 vessel, proof that the particular vehicle or vessel described in
26 the citation, complaint, or warrant was used in the violation,
27 together with proof that the defendant named in the citation,

1 complaint, or warrant was the registered owner of the vehicle or
2 vessel at the time of the violation, constitutes an evidentiary
3 presumption that the registered owner of the vehicle or vessel
4 was the driver of the vehicle or vessel at the time of the
5 violation.

6 (3) The driver of a vehicle or vessel is presumed to be
7 responsible for litter that is thrown, dropped, dumped, depos-
8 ited, placed, or left from the vehicle or vessel on public or
9 private property or waters.

10 (4) In a proceeding for a violation of this part involving
11 litter from a leased motor vehicle or leased vessel, proof that
12 the particular vehicle or vessel described in the citation, com-
13 plaint, or warrant was used in the violation, together with proof
14 that the defendant named in the citation, complaint, or warrant
15 was the lessee of the vehicle or vessel at the time of the viola-
16 tion, constitutes an evidentiary presumption that the lessee of
17 the vehicle or vessel was the driver of the vehicle or vessel at
18 the time of the violation.

19 Sec. 3305. (1) A person who violates this part where the
20 violation involves litter that is produced at a health facility
21 or agency as defined in section 20106 of the public health code,
22 Act No. 368 of the Public Acts of 1978, being section 333.20106
23 of the Michigan Compiled Laws, or a laboratory described in
24 section 20507 of Act No. 368 of the Public Acts of 1978, being
25 section 333.20507 of the Michigan Compiled Laws, is guilty of a
26 misdemeanor, punishable by imprisonment for not more than 6
27 months, or by a fine of not more than \$1,000.00, or both.

1 (2) Except as provided in subsection (3), a person who
2 violates this part where the violation involves litter that is
3 infectious waste, pathological waste, or sharps is guilty of a
4 felony, punishable by imprisonment for not more than 2 years, or
5 by a fine of not more than \$5,000.00, or both.

6 (3) For a second or subsequent violation under subsection
7 (2), the person shall be punished by imprisonment for not less
8 than 1 year or more than 5 years and a fine of not more than
9 \$10,000.00.

10 (4) As used in this section:

11 (a) "Infectious waste" means waste that contains varying
12 amounts of microorganisms that have a potential for causing seri-
13 ous illness.

14 (b) "Pathological waste" means body organs, tissues, parts,
15 and fluids removed during surgery or autopsy, whether or not they
16 are infectious.

17 (c) "Sharps" means discarded hypodermic needles, syringes
18 and scalpel blades, whether or not they are infectious.

19 Sec. 3306. All public authorities having supervision of
20 public property of this state or any political subdivision of
21 this state may post notice signs and otherwise publicize the
22 requirements of this part. All public authorities having super-
23 vision of public property in this state may establish and main-
24 tain receptacles for the deposit of litter on the property and
25 publicize the location of those receptacles.

1 Sec. 3307. This part does not affect or in any way limit
2 the powers of municipalities to enact and enforce ordinances for
3 the control and elimination of litter.

4 PART 35 PESTICIDE CONTROL

5 Sec. 3501. For the purposes of this part the words and
6 phrases defined in sections 3502 to 3506 have the meanings
7 ascribed to them in those sections.

8 Sec. 3502. (1) "Active ingredient" means an ingredient that
9 will prevent, destroy, repel, or mitigate pests, or that will act
10 as a plant regulator, defoliant, or desiccant or otherwise alter
11 the behavior of plants or products.

12 (2) "Adulterated" applies to a pesticide if its strength or
13 purity is less than, or significantly greater than, the professed
14 standard or quality as expressed on its labeling or under which
15 it is sold; if a substance was substituted wholly or in part for
16 a pesticide; or if a valuable constituent of the pesticide was
17 wholly or in part abstracted.

18 (3) "Agricultural commodity" means a plant or part of a
19 plant, or an animal or animal product produced primarily for
20 sale, consumption, propagation, or other use by human beings or
21 animals.

22 (4) "Animal" means all vertebrate and invertebrate species,
23 including, but not limited to, human beings and other mammals,
24 birds, fish, and shellfish.

25 (5) "Avicide" means a substance or mixture of substances for
26 preventing, destroying, repelling, or mitigating pest birds.

1 (6) "Certified applicator" means a person authorized under
2 this part to use and supervise the use of a restricted use
3 pesticide.

4 (7) "Commercial applicator" means a person who is not a pri-
5 vate agricultural applicator, whether that person is a private
6 agricultural applicator with respect to some uses or not, and who
7 uses or supervises the use of a restricted use pesticide or who
8 holds himself or herself out to the public as being in the busi-
9 ness of applying pesticides.

10 Sec. 3503. (1) "Defoliant" means a substance or mixture of
11 substances intended for causing the leaves or foliage to drop
12 from a plant, with or without causing abscission.

13 (2) "Desiccant" means a substance or mixture of substances
14 intended for artificially accelerating the drying of plant
15 tissue.

16 (3) "Device" means an instrument or contrivance, other than
17 a firearm, that is intended for trapping, destroying, repelling,
18 or mitigating a pest; but does not include equipment used for the
19 application of pesticides when sold separately.

20 (4) "Direct supervision" means that a certified applicator
21 is supervising the application of a pesticide and is physically
22 present at the time and place the pesticide is being applied.
23 However, direct supervision by a private agricultural applicator
24 who is supervising the application of a restricted use pesticide
25 for an agricultural purpose means that a certified applicator is
26 either in the same field or at the same location with that
27 applicator as he or she applies the restricted use pesticide or

1 that the private agricultural applicator supervises at all times
2 the applicator and directly supervises representative aspects of
3 each initial application process on an agricultural commodity or
4 agricultural structure, including the calibration, mixing, appli-
5 cation, operator safety, and disposal aspects of the process.

6 (5) "Director of the department of agriculture" means the
7 director of the department of agriculture or his or her autho-
8 rized representative.

9 (6) "Distribute" means to offer for sale, hold for sale,
10 sell, barter, ship, deliver for shipment, or receive and having
11 so received deliver or offer to deliver, pesticides in this
12 state.

13 (7) "Environment" includes water, air, land, plants, and
14 human beings and other animals, and the interrelationships which
15 exist among them.

16 (8) "EPA" means the United States environmental protection
17 agency.

18 (9) "FIFRA" means the federal insecticide, fungicide, and
19 rodenticide act, chapter 125, 61 Stat. 163, 7 U.S.C. 136 to
20 136a-1, 136c to 136i, and 136j to 136y.

21 (10) "Fungi" means all nonchlorophyll bearing thallophytes,
22 that is, all nonchlorophyll bearing plants of a lower order than
23 mosses and liverworts, as for example, rusts, smuts, mildews,
24 molds, yeasts, and bacteria, except those in or on other animals,
25 and except those in or on processed foods, beverages, or
26 pharmaceuticals.

1 Sec. 3504. (1) "Inert ingredient" means an ingredient which
2 is not an active ingredient.

3 (2) "Ingredient statement" means:

4 (a) A statement of the name and percentage of each active
5 ingredient together with the total percentage of the inert ingre-
6 dients in the pesticide.

7 (b) When the pesticide contains arsenic in any form, the
8 ingredient statement shall include percentages of total and water
9 soluble arsenic, each calculated as elemental arsenic.

10 (3) "Insect" means any of the numerous small invertebrate
11 animals generally having the body more or less obviously segment-
12 ed, for the most part belonging to the class insecta, comprising
13 6-legged, usually winged forms, as for example, beetles, bugs,
14 bees, flies, and to other allied classes or arthropods whose mem-
15 bers are wingless and usually have more than 6 legs, as for exam-
16 ple, spiders, mites, ticks, centipedes, and wood lice.

17 (4) "Insecticide" means a substance or mixture of substances
18 intended for preventing, destroying, repelling, or mitigating an
19 insect.

20 (5) "Label" means the written, printed, or graphic matter
21 on, or attached to, the pesticide or device or any of its con-
22 tainers or wrappers.

23 (6) "Labeling" means the label and all other written,
24 printed, or graphic matter accompanying the pesticide or device,
25 or to which reference is made on the label or in literature
26 accompanying the pesticide or device, and all applicable
27 modifications or supplements to official publications of the EPA,

1 the United States departments of agriculture and interior, the
2 United States department of health, education, and welfare, state
3 experiment stations, state agricultural colleges, and other simi-
4 lar federal or state institutions or agencies authorized by law
5 to conduct research in the field of pesticides.

6 (7) "Misbranded" applies to any pesticide or device if it is
7 an imitation of or is offered for sale under the name of another
8 pesticide, or if its labeling does not comply with labeling
9 requirements of this part, the rules promulgated under this part,
10 FIFRA, or regulations promulgated under FIFRA.

11 (8) "Molluscicide" means a substance or mixture of sub-
12 stances intended for preventing, destroying, repelling, or miti-
13 gating a mollusk.

14 Sec. 3505. (1) "Nematode" means invertebrate animals of the
15 phylum nemathelminthes and class nematoda that are unsegmented
16 roundworms with elongated, fusiform, or sac-like bodies covered
17 with cuticle, and inhabiting soil, water, plants, or plant
18 parts. A nematode may also be called a nema or eelworm.

19 (2) "Person" when referring to a certified or registered
20 applicator, means individuals only.

21 (3) "Pest" means an insect, rodent, nematode, fungus, weed,
22 and other forms of terrestrial or aquatic plant or animal life or
23 virus, bacteria, or other microorganism, except viruses, fungi,
24 bacteria, nematodes, or other microorganisms in or on living ani-
25 mals, which the director declares to be a pest under section
26 3521.

1 (4) "Pesticide" means a substance or mixture of substances
2 intended for preventing, destroying, repelling, or mitigating
3 pests, or intended for use as a plant regulator, defoliant, or
4 desiccant.

5 (5) "Place of business" means a location that is staffed by
6 at least 1 person who independently, without supervision, applies
7 pesticides or who supervises others in the use of pesticides.

8 (6) "Plant regulator" means a substance or mixture of sub-
9 stances intended through physiological action for accelerating or
10 retarding the rate of growth or rate of maturation, or for other-
11 wise altering the behavior of plants or the produce of plants,
12 but does not include substances to the extent that they are
13 intended as plant nutrients, trace elements, nutritional chemi-
14 cals, plant inoculants, and soil amendments.

15 (7) "Private agricultural applicator" means a certified
16 applicator who uses or supervises the use of a restricted use
17 pesticide for a private agricultural purpose.

18 (8) "Private agricultural purpose" means the production of
19 an agricultural commodity on property owned or rented by a person
20 or his or her employer or if applied without compensation, other
21 than trading of personal services between producers of agricul-
22 tural commodities, on the property of another person.

23 (9) "Protect health and environment" means protection
24 against any unreasonable adverse effects on the environment.

25 Sec. 3506. (1) "Registered applicator" means a person who
26 is not a certified applicator and with respect to whom 1 or more
27 of the following apply:

1 (a) He or she is authorized to apply general and restricted
2 use pesticides for a commercial purpose as provided in this part
3 and in the rules promulgated under this part.

4 (b) He or she applies pesticides as a scheduled and required
5 work assignment in the course of his or her employment on the
6 property of another person for any purpose.

7 (c) He or she applies pesticides for a private agricultural
8 purpose.

9 (2) "Registrant" means a person who has registered a pesti-
10 cide pursuant to this part.

11 (3) "Restricted use pesticide" means a pesticide formulation
12 classified for restricted use by EPA or the director of the
13 department of agriculture.

14 (4) "Restricted use pesticide dealer" means a person engaged
15 in distributing, selling, or offering for sale restricted use
16 pesticides to the ultimate user.

17 (5) "Rodenticide" means a substance or mixture of substances
18 intended for preventing, destroying, repelling, or mitigating
19 rodents or any other vertebrate animal.

20 (6) "Supervise" means the act or process of a certified
21 applicator in directing the application of a pesticide by a com-
22 petent person under his or her instruction and control for whose
23 actions the certified applicator is responsible, even though the
24 certified applicator is not physically present at the time and
25 place the pesticide is applied.

26 (7) "Unreasonable adverse effect on the environment" means
27 any unreasonable risk to human beings or the environment, taking

1 into account the economic, social, and environmental costs and
2 benefits of the use of a pesticide.

3 (8) "Vendor" means a person that sells or distributes
4 pesticides.

5 (9) "Weed" means a plant that grows where it is not wanted.

6 Sec. 3507. (1) Every pesticide that is distributed, sold,
7 exposed, or offered for sale in this state shall be registered
8 with the director of the department of agriculture pursuant to
9 this part. Registration shall be on forms provided by the direc-
10 tor and shall be renewed annually before July 1. Registration is
11 not required if a pesticide is shipped from 1 plant or warehouse
12 to another plant or warehouse operated by the same person and
13 used solely at that plant or warehouse as a constituent ingredi-
14 ent to make a pesticide that is registered under this part, or if
15 the pesticide is distributed pursuant to an experimental permit.

16 (2) An applicant for registration of a pesticide shall
17 submit a complete copy of the labeling accompanying the pesti-
18 cide, and shall file on a form provided by the director of the
19 department of agriculture information that includes all of the
20 following:

21 (a) The name and address of the applicant and the name and
22 address of the person whose name will appear on the label, if
23 other than the applicant.

24 (b) The full product name of the pesticide.

25 (c) A full description of tests made and the results of
26 tests made upon which claims are based for the pesticide if not
27 registered by the EPA.

1 (d) Other necessary information required for completion of
2 the registration form.

3 (3) To register a pesticide for special local needs pursuant
4 to section 24(c) of FIFRA, 7 U.S.C. 136v, or the regulations
5 promulgated under that section, the director of the department of
6 agriculture shall require the information set forth under subsec-
7 tion (2). A pesticide may be registered for special local needs
8 if the director of the department of agriculture determines
9 that:

10 (a) Its composition warrants the proposed claims for it.

11 (b) Its labeling and other material required to be submitted
12 comply with the labeling requirements of FIFRA or regulations
13 promulgated under that act.

14 (c) It will perform its intended functions without unreason-
15 able adverse effects on the environment.

16 (d) If used in accordance with widespread and commonly rec-
17 ognized practice, it will not generally cause unreasonable,
18 adverse effects on the environment.

19 (e) The classification for general or restricted use is in
20 conformity with section 3(d) of FIFRA, 7 U.S.C. 136a.

21 (4) The director of the department of agriculture shall
22 require the applicant to submit a complete formula of the pesti-
23 cide proposed for registration, including the active and inert
24 ingredients, if necessary to execute the director's duties under
25 this part. The director may not use for his or her own advantage
26 or reveal, other than to his or her authorized representative,
27 the EPA, the department of natural resources, the department of

1 public health, a court of the state in response to a subpoena, a
2 licensed physician, or in an emergency to a pharmacist or other
3 persons qualified to administer antidotes, any information rela-
4 tive to formulas of products, trade secrets, or other information
5 obtained under authority of this part.

6 (5) A registration approved by the director of the depart-
7 ment of agriculture and in effect on June 30 for which the July 1
8 renewal application is made and the annual registration fee paid
9 shall continue in full force and effect until the director noti-
10 fies the applicant that the registrâtion is renewed or denied.

11 (6) Decisions on pesticide registration shall continue to be
12 made cooperatively by the departments of agriculture, natural
13 resources, and public health and the water resources commission
14 in accordance with a memorandum of agreement entered into by the
15 departments.

16 Sec. 3508. The director of the department of agriculture
17 may do all of the following:

18 (a) Issue an experimental permit to a person applying for
19 that permit if the director determines that the permit is neces-
20 sary for the applicant to accumulate information necessary to
21 register a pesticide.

22 (b) Prescribe terms, conditions, and the period of time the
23 pesticide may be used under the experimental permit, which shall
24 be under the supervision of the director of the department of
25 agriculture.

26 (c) Revoke an experimental permit when its terms or
27 conditions are violated, or its terms and conditions are

1 inadequate to avoid unreasonable, adverse effects on the
2 environment.

3 Sec. 3509. The director of the department of agriculture
4 may refuse to register or may cancel or suspend registration of a
5 pesticide if 1 or more of the following circumstances exist:

6 (a) A pesticide does not warrant the proposed claims for it
7 or the pesticide and its labeling and other material required to
8 be submitted do not comply with this part or the rules promul-
9 gated under this part. The applicant shall be notified of the
10 manner in which the pesticide, labeling, or other material
11 required to be submitted fails to comply with this part. If,
12 upon receipt of the notice, the applicant does not make the
13 required changes within 30 days, the director may refuse to reg-
14 ister the pesticide.

15 (b) A registered pesticide or a pesticide proposed for reg-
16 istration under this part is in violation of this part or rules
17 promulgated under this part.

18 (c) Based on substantial scientific evidence, use of a pes-
19 ticide causes, or is likely to cause if the pesticide is regis-
20 tered, an unreasonable, adverse effect.

21 (d) Based on substantial scientific evidence, use of a pes-
22 ticide causes, or is likely to cause if the pesticide is regis-
23 tered, an unreasonable, serious, chronic hazard to human health
24 or long-term environmental damage, which cannot be controlled by
25 designating the pesticide as a restricted use pesticide, by lim-
26 iting the uses for which a pesticide may be used or registered,
27 or by other changes to the registration or pesticide label.

1 Sec. 3510. (1) A person who is a restricted use pesticide
2 dealer shall obtain an annual license for each business
3 location. The license shall expire on December 31. The annual
4 license fee of \$50.00 shall accompany the application for license
5 together with other pertinent information the director of the
6 department of agriculture may require. The license fee shall be
7 credited to the general fund of the state.

8 (2) Application shall be made by a person in charge of each
9 business location who shall demonstrate to the director of the
10 department of agriculture his or her knowledge of the laws and
11 rules governing the use and sale of restricted use pesticides,
12 and his or her responsibility in carrying on the business of a
13 restricted use pesticide dealer. This demonstration shall be
14 made with a written examination prescribed by the director.

15 (3) A restricted use pesticide dealer shall forward to the
16 director of the department of agriculture, as required by rule, a
17 record of all sales of restricted use pesticides on forms pro-
18 vided by the director. Duplicate copies of the records shall be
19 kept on file by the restricted use pesticide dealer, subject to
20 inspection by an authorized agent of the director of the depart-
21 ment of agriculture, for 2 years after the date of sale. The
22 information contained in the individual reports filed with the
23 director of the department of agriculture by licensees pursuant
24 to this section, shall, upon request, be supplied in summary form
25 to other state agencies, except that the information regarding a
26 pesticide for which a patent is in force may not be made
27 available to the public if, in the discretion of the director,

1 release of that information would tend to have a significant
2 adverse effect on the competitive position of the dealer, dis-
3 tributor, or manufacturer. The summary shall include the name
4 and address of the restricted use pesticide dealer, the name and
5 address of the purchaser, the name of the pesticide sold and, in
6 an emergency, the quantity sold.

7 (4) A restricted use pesticide shall be sold or distributed
8 only by a licensed restricted use pesticide dealer for use by
9 applicators certified under this part.

10 (5) A restricted use pesticide dealer's license is subject
11 to denial, suspension, or revocation for a violation of this sec-
12 tion or rules promulgated under this section, whether committed
13 by the dealer or by the dealer's officer, agent, or employee.

14 Sec. 3511. (1) A private agricultural applicator or commer-
15 cial applicator shall not use a restricted use pesticide without
16 first complying with the certification and other requirements of
17 this part and the rules promulgated under this part.

18 Certification requirements for commercial applicators include
19 completion of a written examination prescribed by the director of
20 the department of agriculture. Certification requirements for
21 private agricultural applicators shall provide optional methods
22 of certification to include 1 of the following:

23 (a) Self-study and examination.

24 (b) Classroom training and examination.

25 (c) An oral fact-finding interview administered by an autho-
26 rized representative of the director of the department of

1 agriculture when a person is unable to demonstrate competence by
2 examination or classroom training.

3 (2) A certified commercial applicator shall maintain records
4 of restricted use pesticide applications for 3 years from the
5 date of application and make those records available upon request
6 to an authorized representative of the director of the department
7 of agriculture during normal business hours.

8 (3) A certified applicator shall supervise the application
9 of a general use pesticide by a noncertified applicator under his
10 or her instruction and control even though the certified applica-
11 tor is not physically present. A certified applicator shall
12 directly supervise the application of a restricted use pesticide
13 if prescribed by the label, this part, or rules promulgated under
14 this part.

15 (4) A certified applicator and a commercial applicator are
16 subject to the requirements, prohibitions, and penalties of this
17 part for an application of pesticides by the certified applicator
18 or the commercial applicator and for an application of pesticides
19 by a person directly or indirectly supervised by the certified
20 applicator or the commercial applicator.

21 (5) A person shall follow recommended and accepted good
22 practices in the use of pesticides including use of a pesticide
23 in a manner consistent with its labeling.

24 (6) A federal agency, state agency, municipality, county
25 road commission, or any other governmental agency that uses a
26 pesticide classified for restricted use is subject to this part
27 and the rules promulgated under this part.

1 Sec. 3512. (1) Satisfactory completion of certification
2 requirements prescribed by the director of the department of
3 agriculture and categorized according to the various types of
4 pesticide applications prescribed by rule and consistent with the
5 regulations of EPA are a prerequisite for certification.

6 (2) Application for a private agricultural applicator cer-
7 tificate or a commercial applicator certificate shall be on a
8 form provided by the director of the department of agriculture
9 and contain information regarding the applicant's qualifications
10 and proposed operations, type of equipment to be used by the
11 applicant, and other information considered to be pertinent by
12 the director.

13 (3) An application for a private agricultural applicator
14 certificate or a commercial applicator certificate shall be
15 accompanied by the appropriate fee as provided in section 3516.

16 (4) If an applicant complies with the certification require-
17 ments, the director of the department of agriculture shall issue
18 a certificate which signifies that the applicant is a certified
19 private agricultural applicator or a certified commercial
20 applicator.

21 (5) A private agricultural applicator certificate or a com-
22 mercial applicator certificate may restrict an applicant to the
23 use of a certain type of equipment or pesticide if the director
24 of the department of agriculture finds that the applicant is
25 qualified to use only that type of equipment or pesticide.

26 (6) The director of the department of agriculture may refuse
27 to issue a private agricultural applicator certificate or a

1 commercial applicator certificate or renewal of a certificate if
2 an applicant demonstrates an insufficient knowledge of any item
3 called for in the application, has unsatisfied judgments against
4 him or her, or if the equipment to be used by the applicant is
5 unsafe or inadequate to accomplish the proper application of the
6 pesticides to be used.

7 (7) If an applicant is not issued a private agricultural
8 applicator certificate or a commercial applicator certificate
9 under this section, the director of the department of agriculture
10 shall inform the applicant in writing of the reasons that the
11 license was not issued.

12 (8) The director of the department of agriculture may at any
13 time deny, revoke, or suspend a private agricultural applicator
14 certificate or a commercial applicator certificate for a viola-
15 tion of this part, or a violation of an order issued under this
16 part, or upon conviction under section 14 of FIFRA, 7
17 U.S.C. 1364, or upon conviction under a state pesticide law of a
18 reciprocating state in accordance with section 3519.

19 Sec. 3513. (1) A commercial applicator who advertises in
20 any form or who holds himself or herself out to the public as
21 being in the business of applying either general use or
22 restricted use pesticides shall obtain a commercial applicator
23 license for each place of business and shall comply with the
24 requirements of this section before engaging in business.

25 (2) A commercial applicator required to be licensed by sub-
26 section (1) shall be certified under section 3512 and shall have

1 at least 1 of the following in order to qualify for a license
2 under this section:

3 (a) Service for not less than 2 years as an employee of 1 or
4 more commercial applicators, or a person with comparable
5 experience as determined by the director of the department of
6 agriculture, during which period the employee receives training
7 and obtains experience in the application of pesticides under the
8 supervision of a commercial applicator.

9 (b) A baccalaureate degree from a recognized college or uni-
10 versity in a discipline that provides education regarding pests
11 and the control of pests and 1 year of service as an employee of
12 1 or more commercial applicators, or a person with comparable
13 experience as determined by the director of the department of
14 agriculture, during which period the employee receives training
15 and obtains experience in the application of pesticides under the
16 supervision of a commercial applicator.

17 (c) A commercial applicator license issued under the former
18 Act No. 171 of the Public Acts of 1976 before December 27, 1988.

19 (3) An application for a commercial applicator license shall
20 be on a form provided by the director of the department of agri-
21 culture and contain information regarding the applicant's quali-
22 fications and proposed operations, the type of equipment to be
23 used by the applicant, and other information considered pertinent
24 by the director.

25 (4) An application for a commercial applicator license shall
26 be accompanied by the appropriate fee as provided in section
27 3516.

1 (5) An application for a commercial applicator license shall
2 be accompanied by proof of sufficient financial responsibility as
3 prescribed by rule.

4 (6) A commercial applicator license may restrict the appli-
5 cant to use a certain type of equipment or pesticide if the
6 director of the department of agriculture finds that the appli-
7 cant is qualified to use only that type.

8 (7) The director of the department of agriculture may refuse
9 to issue or renew a commercial applicator license if the appli-
10 cant demonstrates an insufficient knowledge of an item called for
11 in the application, has unsatisfied judgments against him or her,
12 or if the equipment to be used by the applicant is unsafe or
13 inadequate to accomplish the proper application of the pesticides
14 to be used.

15 (8) If an applicant is not issued a commercial applicator
16 license under this section, the director of the department of
17 agriculture shall inform the applicant in writing of the reasons
18 that the license was not issued.

19 (9) The director of the department of agriculture may at any
20 time deny, revoke, or suspend a commercial applicator license for
21 a violation of this part or a violation of an order issued under
22 this part, or upon conviction under this part, FIFRA, or a state
23 pesticide law of a reciprocating state in accordance with section
24 3519.

25 Sec. 3514. (1) Commencing 3 months after promulgation of
26 the rules required under section 3522, it is a violation of this
27 part for a person to apply any pesticide for a commercial purpose

1 or to apply any pesticide as a scheduled and required work
2 assignment in the course of his or her employment on the property
3 of another for any purpose other than a private agricultural pur-
4 pose unless that person is either a certified applicator or a
5 registered applicator.

6 (2) To be eligible to be a registered applicator, an appli-
7 cant shall do all of the following:

8 (a) Complete a training program that has been approved by
9 the director of the department of agriculture and is conducted by
10 a trainer who has the minimum qualifications established by
11 rule. Registration requirements for applicators who apply pesti-
12 cides only for private agricultural purposes may provide optional
13 methods of training and testing as provided in section 3511(1).
14 The training program shall be designed to facilitate and encour-
15 age persons who apply pesticides for private agricultural pur-
16 poses to become registered applicators.

17 (b) Pass a test that is approved by the director of the
18 department of agriculture and is administered by his or her
19 designee.

20 (c) Possess either a valid temporary registration certifi-
21 cate issued by the designee of the director of the department of
22 agriculture or a valid registration card issued by the director
23 of the department of agriculture.

24 (3) If an applicant successfully completes an approved
25 training program and passes a test that is administered by the
26 designee of the director of the department of agriculture as a
27 requirement of that training program, a trainer shall issue a

1 temporary registration to an applicant. A temporary registration
2 is only valid from the time it is issued until the applicant
3 receives a registration card from the director of the department
4 of agriculture. An applicant may receive a valid registration
5 card upon payment of the fee provided for in section 3516(3) and
6 when the designee of the director of the department of agricul-
7 ture submits to the director of the department of agriculture a
8 program completion form that is signed and dated by the trainer
9 and by the applicant stating that the required training program
10 has been provided and received and indicating that the applicant
11 has passed the required test. The program completion form shall
12 be promptly submitted as soon as the designee of the director of
13 the department of agriculture issues a temporary registration.

14 (4) A registered applicator may apply a pesticide that is
15 not a restricted use pesticide under the supervision of a certi-
16 fied applicator and may apply a restricted use pesticide when
17 under the direct supervision of a certified applicator. In addi-
18 tion, during a registered applicator's initial 3-year registra-
19 tion, a registered applicator may apply categories of restricted
20 use pesticides while not directly supervised after the registered
21 applicator has applied that category of restricted use pesticide
22 under direct supervision for the number of hours required by the
23 director of the department of agriculture unless prohibited by a
24 label.

25 (5) A registered applicator who applies general use pesti-
26 cides only for a private agricultural purpose or is not employed
27 by a commercial applicator and who applies general use pesticides

1 as a scheduled and required work assignment in the course of his
2 or her employment is exempt from the provisions of this part
3 requiring supervision by a certified applicator when that regis-
4 tered applicator applies general use pesticides.

5 (6) The employer of a registered applicator shall maintain a
6 record of the hours and location of directly supervised hours of
7 application of restricted use pesticide by each registered appli-
8 cator for the duration of the restricted applicator's employment
9 and for 3 years following the termination of that person's
10 employment. In addition, when a registered applicator has
11 applied a category of restricted use pesticides while directly
12 supervised for the length of time required by the director of the
13 department of agriculture, the employer of the applicator may
14 notify the director of the department of agriculture. Upon noti-
15 fication, the director of the department of agriculture shall
16 forward a sticker or symbol to the employer that shall be
17 attached to the registered applicator's registration card.

18 (7) A registered applicator who is applying any pesticide
19 shall display his or her registration card upon the request of an
20 employee of the department of agriculture.

21 (8) A registered applicator shall complete a refresher
22 training program every 3 years to be eligible to renew his or her
23 registration.

24 (9) The director of the department of agriculture may at any
25 time deny, revoke, or suspend a certification or registration for
26 a violation of this part, or a violation of an order issued under
27 this part, or upon conviction under this part or FIFRA, or upon

1 conviction under a state pesticide law of a reciprocating state
2 in accordance with section 3519.

3 (10) The director of the department of agriculture shall
4 develop and provide the documents and forms necessary to imple-
5 ment this section.

6 Sec. 3515. (1) A private agricultural applicator or a com-
7 mercial applicator, in addition to complying with the other
8 requirements of this part, shall meet 1 or more of the following
9 requirements before engaging in the aerial application of
10 pesticides:

11 (a) Attainment of at least 3 years of experience with not
12 fewer than 200 hours of agricultural aerial application under the
13 supervision of a commercial aerial applicator.

14 (b) Be licensed as a commercial aerial applicator before
15 December 27, 1988.

16 (c) Successfully complete an aerial applicator training pro-
17 gram recognized by the director of the department of agriculture
18 as sufficient to assure the protection of the public health,
19 safety, and welfare, and the environment.

20 (2) A private agricultural applicator or a commercial appli-
21 cator authorized under this part to make aerial application of
22 pesticides shall do either of the following once every 3 years:

23 (a) Demonstrate to the director of the department of agri-
24 culture the applicator's personal participation in a
25 self-regulating application flight efficiency clinic sponsored or
26 recognized by the Michigan cooperative extension service and

1 approved by the department of agriculture with an aircraft that
2 the applicant operates.

3 (b) Retake the certification examinations and submit to an
4 inspection of the applicator's aircraft, equipment, and spray
5 operations by an authorized representative of the director of the
6 department of agriculture.

7 Sec. 3516. (1) Except as otherwise provided in this subsec-
8 tion, a fee of \$50.00 shall accompany the application for a cer-
9 tificate for a certified commercial applicator. A fee of \$10.00
10 shall accompany an application for a private agricultural appli-
11 cator and an application for a registered applicator who applies
12 pesticides only for a private agricultural purpose. A certifi-
13 cate shall be valid until revoked or for a period of time of not
14 less than 3 years to be established by rule by the director of
15 the department of agriculture. The director of the department of
16 agriculture shall consider changes in technology or use patterns
17 in those categories of pesticide applications engaged in by the
18 applicant as the criteria for requiring renewal. The certificate
19 may be renewed if the applicant qualifies and pays the certifica-
20 tion fee.

21 (2) A fee of \$50.00 shall accompany an application for a
22 license for a commercial applicator. The license shall expire on
23 December 31 annually.

24 (3) Except as otherwise provided in this section, a fee of
25 \$25.00 shall accompany the application for the registration of an
26 applicator and the renewal of the applicator's registration. The

1 registration shall expire 3 years after the date on which it is
2 issued.

3 (4) An applicant desiring to register a pesticide product
4 shall pay to the director of the department of agriculture an
5 annual registration fee of \$20.00 for each name of pesticide
6 product sold, offered, exposed for sale, or distributed in this
7 state.

8 Sec. 3517. (1) A pesticide control fund is established in
9 the state treasury. The pesticide control fund shall be expended
10 only as provided in this section.

11 (2) The pesticide control fund shall receive as revenue all
12 fees collected under this part which shall be forwarded by the
13 director of the department of agriculture to the state treasurer
14 and the fund may receive as revenue money appropriated by the
15 legislature or from any other source.

16 (3) The revenue in the pesticide control fund shall be
17 expended to administer and enforce this part, to process applica-
18 tions received under this section, and to develop and improve
19 training programs to insure the safe application of pesticides.

20 (4) Money in the fund that is unexpended at the end of the
21 fiscal year shall be carried over to the succeeding fiscal year
22 and shall be expended as provided in subsection (3).

23 Sec. 3518. The certification and registration of applica-
24 tors and licensing requirements do not apply to any of the
25 following:

1 (a) Employees of a certified private agricultural applicator
2 while acting under the level of supervision required in this
3 part.

4 (b) Commercial applicators applying general use pesticides
5 indoors other than insecticides, rodenticides, avicides, and
6 molluscicides.

7 (c) Persons applying general use pesticides for a private
8 agricultural purpose.

9 (d) Persons applying general use pesticides on their own
10 premises, or employees of those persons applying general use pes-
11 ticides indoors other than insecticides, rodenticides, avicides,
12 and molluscicides on those premises as a scheduled and required
13 work assignment in the course of their employment.

14 (e) Allopathic or osteopathic physicians, and doctors of
15 veterinary medicine applying pesticides during the course of
16 their normal practice.

17 (f) Persons conducting laboratory type research involving
18 restricted use pesticides.

19 Sec. 3519. The director of the department of agriculture
20 may enter into reciprocal agreements with other states or federal
21 agencies for the purpose of accepting certification or registra-
22 tion required for pesticide applicators. If those states or fed-
23 eral agencies have an approved program to certify or register
24 applicators, and if the requirements for certification or regis-
25 tration by those states or federal agencies equal or exceed the
26 certification or registration requirements of this state.

1 Sec. 3520. (1) A certificate or license issued by the
2 director of the department of agriculture does not exonerate the
3 holder from responsibility for damage resulting from misuse of
4 pesticides such as, but not limited to, overdosing, drifting, or
5 misapplication.

6 (2) A person claiming damages from a pesticide application
7 shall file a claim to and on a reporting form provided by the
8 director of the department of agriculture. This report shall be
9 filed within 60 days after the date of the alleged damaging
10 application or first observation of damage by the claimant. If a
11 growing crop is alleged to have been damaged, the report shall be
12 filed before 25% of the crop is harvested. The director of the
13 department of agriculture shall, within 7 days after receipt of
14 the report, notify the applicator and the owner or lessee of the
15 property or other persons who may be charged with the responsi-
16 bility of the damages claimed, and furnish them copies of any
17 statements requested. The director of the department of agricul-
18 ture will inspect damages when the director of the department of
19 agriculture determines that the complaint has sufficient merit.
20 The director of the department of agriculture shall make all
21 information pertaining to the complaint available to the person
22 claiming damage and to the person who is alleged to have caused
23 the damage.

24 (3) The claimant shall permit the director of the department
25 of agriculture, the applicator and their representatives, such as
26 a bondsman or insurer, to observe within reasonable hours the
27 property or nontarget organism alleged to have been damaged and

1 to collect samples for further examination in order that damage
2 may be determined.

3 (4) The filing of a report or the failure to file such a
4 report is not required to be alleged in any petition filed in a
5 court of law, and the failure to file the report is not a bar to
6 the maintenance of a criminal or civil action.

7 Sec. 3521. (1) The director of the department of agricul-
8 ture may do all of the following:

9 (a) Declare as a pest any form of plant or animal life,
10 except virus, nematodes, bacteria, or other microorganisms on or
11 in living human beings or other animals, that is injurious to
12 health or the environment.

13 (b) Determine the toxicity of pesticides to human beings.
14 The director of the department of agriculture shall use the data
15 in support of registration and classification as a guide in this
16 determination.

17 (c) Determine pesticides, and quantities of substances con-
18 tained in pesticides, that are injurious to the environment. The
19 director of the department of agriculture shall use the EPA regu-
20 lations as a guide in this determination.

21 (d) Enter into cooperative agreements with agencies of the
22 federal government or any other agency of this state, or an
23 agency of another state for the purpose of carrying out this part
24 and securing uniformity of rules.

25 (e) Enter upon any public or private premises or other
26 place, including vehicles of transport, where pesticides or
27 devices are being used or held for distribution or sale, for the

1 purposes of inspecting and obtaining samples of pesticides or
2 devices or to inspect equipment or methods of application.

3 (f) Allow only certified applicators to apply a pesticide
4 that is classified as a restricted use pesticide pursuant to
5 subsection (2).

6 (2) In addition to any other authority provided by this
7 part, the director of the department of agriculture, by adminis-
8 trative order, may classify a pesticide as a restricted use pes-
9 ticide in accordance with any 1 of the restrictive criteria in 40
10 C.F.R. 152.170.

11 (3) Prior to classifying a pesticide as a restricted use
12 pesticide under subsection (2), the director of the department of
13 agriculture shall issue a preliminary administrative order and
14 provide for a 30-day period for public comment and review per-
15 taining to the preliminary order. Prior to issuing the final
16 administrative order, the director of the department of agricul-
17 ture shall review and consider any public comments received
18 during the 30-day period. An administrative order classifying a
19 pesticide as a restricted use pesticide shall cite each of the
20 provisions of subsection (2) that justify that classification.

21 Sec. 3522. (1) The director of the department of agricul-
22 ture may promulgate rules for carrying out this part, including,
23 but not limited to, rules providing for:

24 (a) The collection, examination, and reporting of the
25 results of examination of samples of pesticides or devices.

26 (b) The safe handling, transportation, storage, display,
27 distribution, and disposal of pesticides and their containers.

1 (c) The designation of restricted use pesticides for the
2 state or for specified areas within the state. The director of
3 the department of agriculture may include in the rule the time
4 and conditions of sale, distribution, and use of restricted use
5 pesticides.

6 (d) The certification and licensing of applicators, and the
7 licensing of restricted use pesticide dealers.

8 (e) The maintenance of records by certified commercial
9 applicators with respect to applications of restricted use
10 pesticides.

11 (f) Good practice in the use of pesticides.

12 (g) Use of a pesticide in a manner consistent with its
13 labeling including adequate supervision of noncertified applica-
14 tors if appropriate.

15 (2) The director of the department of agriculture shall
16 submit rules to the joint committee on administrative rules per-
17 taining to all of the following:

18 (a) The development of a training program for applicators
19 who apply pesticides for private agricultural purposes on the use
20 of appropriate procedures for the application of pesticides;
21 safety procedures for pesticide application; clothing and protec-
22 tive equipment for pesticide application; the detection of common
23 symptoms of pesticide poisoning; the means of obtaining emergency
24 medical treatment; hazards posed by pesticides to workers, the
25 public health, and the environment; specific categories of pesti-
26 cides; and the requirements of applicable laws, rules, and
27 labeling.

1 (b) The development of training programs for integrated pest
2 management systems in schools, public buildings, and health care
3 facilities.

4 (c) The duty of commercial applicators to inform customers
5 of potential risks and benefits associated with the application
6 of pesticides.

7 (3) The director of the department of agriculture shall
8 submit rules to the joint committee on administrative rules per-
9 taining to the protection of agriculture employees who hand har-
10 vest agricultural commodities regarding all of the following:

11 (a) The establishment of field reentry periods after the
12 application of agricultural pesticides.

13 (b) The posting and notification of areas where pesticides
14 have been applied.

15 (c) The use of protective clothing, safety devices, hand
16 washing, or other methods of protection from pesticide exposure.

17 (d) Notification of agricultural workers of poison treatment
18 facilities.

19 (4) If the EPA at any time adopts and publishes agricultural
20 worker protection standards, the federal standards shall super-
21 sede rules promulgated under subsection (3).

22 (5) The director of the department of agriculture shall
23 submit rules to the joint committee on administrative rules.
24 These rules shall include all of the following:

25 (a) Minimum standards of competency and experience or exper-
26 tise for trainers of certified and registered applicators.

1 (b) The development of a training program for applicators on
2 the use of appropriate procedures for the application of
3 pesticides; safety procedures for pesticide application; clothing
4 and protective equipment for pesticide application; the detection
5 of common symptoms of pesticide poisoning; the means of obtaining
6 emergency medical treatment; hazards posed by pesticides to work-
7 ers, the public health, and the environment; specific categories
8 of pesticides; and the requirements of applicable laws, rules,
9 and labeling.

10 (c) The number of directly supervised application hours
11 required before a registered applicator may apply each category
12 of restricted use pesticide without direct supervision.

13 Sec. 3523. (1) A pesticide advisory committee is created
14 within the department of agriculture. The committee shall be
15 composed of the following members:

16 (a) The director of the department of agriculture.

17 (b) The director of the department of natural resources.

18 (c) A representative of the department of natural resources
19 selected by the director of the department of natural resources
20 who has expertise regarding water quality programs.

21 (d) The director of public health.

22 (e) The director of the Michigan cooperative extension
23 service.

24 (2) The director of the department of agriculture shall
25 appoint 8 additional members to the committee, 1 each represent-
26 ing the following:

1 (a) Licensed indoor commercial applicators.

2 (b) Licensed outdoor commercial applicators.

3 (c) Producers of agricultural commodities.

4 (d) Licensed aerial applicators.

5 (e) Nongovernmental organizations for environmental
6 preservation.

7 (f) Farm employees.

8 (g) Those in the medical or health science profession
9 experienced in the toxicology of pesticides.

10 (h) Agricultural chemical industry.

11 (4) The members of the committee may designate an authorized
12 representative to represent them on the committee. Of the mem-
13 bers first appointed by the director of the department of agri-
14 culture, 3 shall serve for 1 year, 3 for 2 years, and 2 for 3
15 years. Thereafter, an appointment shall be for 3 years.

16 Vacancies shall be filled for the balance of an unexpired term.

17 The committee shall meet on the call of the director of the
18 department of agriculture, who shall serve as chairperson. The
19 director of the department of agriculture shall call a meeting of
20 the committee upon request of 2 or more members. A majority of
21 the members of the committee constitute a quorum.

22 (5) The pesticide advisory committee shall consult with and
23 advise the director of the department of agriculture in the
24 administration of this part and have the following
25 responsibilities:

26 (a) To analyze and summarize information pertaining to
27 pesticide use, including, but not limited to, the number and

1 types of pesticide use violations, underlying causes and
2 circumstances involving pesticide misuse, and to develop a pro-
3 file of violators of this part.

4 (b) To evaluate potential contamination related to the size
5 and disposal of pesticide containers for home, agricultural,
6 industrial, and commercial use and make recommendations to the
7 legislature.

8 (c) To utilize available information pertaining to the
9 misuse of pesticides to determine whether the training programs
10 offered by the director of the department of agriculture are
11 effective in curtailing misuses.

12 (d) To review all training requirements for applicators and
13 persons licensed under this part, including the specific review
14 of the components of each area tested under this part, and to
15 make recommendations to the director of the department of agri-
16 culture regarding training and testing. Notwithstanding the
17 responsibilities of the committee under this subdivision, the
18 specific test questions prepared to implement requirements of
19 this part are confidential.

20 (e) To annually publish a report to be submitted to the gov-
21 ernor, the legislature, and the director of the department of
22 agriculture. The report shall include all of the following:

23 (i) A review of the recommendations of the committee.

24 (ii) Recommendations regarding amendatory language for this
25 part.

26 (iii) Recommendations regarding resources necessary to
27 adequately implement this part.

1 (iv) A summary of the annual enforcement actions taken under
2 this part.

3 (6). All meetings of the committee shall be conducted pursu-
4 ant to the open meetings act, Act No. 267 of the Public Acts of
5 1976, being sections 15.261 to 15.275 of the Michigan Compiled
6 Laws.

7 Sec. 3524. (1) When the director of the department of agri-
8 culture believes that an applicator is using or intending to use
9 a pesticide in an unsafe or inadequate manner, or in a manner
10 inconsistent with its labeling, the director of the department of
11 agriculture shall order the applicator to cease the use of or
12 refrain from the intended use of the pesticide. The order may be
13 either oral or written, and shall inform the applicator of the
14 reason for the order.

15 (2) Upon receipt of the order, the applicator shall immedi-
16 ately comply with the order. Failure to comply constitutes cause
17 for revocation of the license or certification and subjects the
18 applicator to the penalty imposed under section 3529.

19 (3) The director of the department of agriculture shall
20 rescind the order immediately upon being satisfied after inspec-
21 tion that the order has been complied with. The inspection shall
22 be conducted as soon as possible at the oral or written request
23 of the applicator. The rescinding order of the director of the
24 department of agriculture may be oral and the applicator may rely
25 on that oral rescinding order. However, an oral order shall be
26 followed by a written rescinding order.

1 (4) If sampling or examination of a pesticide or device
2 discloses that it fails to comply with this part or the rules
3 promulgated under this part, then the pesticide or device is in
4 violation of this part.

5 Sec. 3525. (1) When the director of the department of agri-
6 culture has reasonable cause to believe that a pesticide or
7 device is being distributed, stored, transported, offered for
8 sale, or used in violation of this part or the rules promulgated
9 under this part, the director of the department of agriculture
10 may issue a written order to the owner or custodian of the pesti-
11 cide or device to stop the prohibited conduct. After receipt of
12 such an order, a person shall not sell, use, or remove the pesti-
13 cide or device described in the order except in accordance with
14 the order.

15 (2) A pesticide or device that is being transported, a pes-
16 ticide or device that was transported and remains unsold or is in
17 original unbroken packages, a pesticide or device that is sold or
18 offered for sale in this state, or a pesticide or device that is
19 imported from a foreign country, in violation of this part or the
20 rules promulgated under this part is subject to the procedures
21 described in this subsection. The proceeding may be brought in
22 any district court in the district where the pesticide or device
23 is found. A pesticide or device described in this subsection may
24 be seized for confiscation by a process in rem for condemnation
25 if:

26 (a) In the case of a pesticide any of the following
27 circumstances exist:

- 1 (i) It is adulterated or misbranded.
- 2 (ii) It is not registered pursuant to this part.
- 3 (iii) Its labeling fails to bear the information required by
4 FIFRA or the regulations promulgated under FIFRA.
- 5 (iv) It is not colored or discolored and coloring or discol-
6 oring is required under FIFRA.
- 7 (v) Any of the claims made for it or any of the directions
8 for its use differ in substance from the representations made in
9 connection with its registration.
- 10 (b) In the case of a device, it is misbranded.
- 11 (c) In the case of a pesticide or device, when used in
12 accordance with the requirements imposed under this part and as
13 directed by the labeling, it nevertheless causes unreasonable-
14 adverse effects on the environment. However, when a plant regu-
15 lator, defoliant, or desiccant is used in accordance with the
16 label claims and recommendations, physical or physiological
17 effects on plants or parts of plants are not considered to be
18 injurious, when those effects are the purpose for which the plant
19 regulator, defoliant, or desiccant was applied.
- 20 (3) If the pesticide or device is condemned it shall, after
21 entry of the decree, be disposed of by destruction or sale as the
22 court directs and, if sold, the proceeds less the court costs
23 shall be credited to the general fund, but the pesticide or
24 device shall not be sold contrary to this part or the laws of the
25 jurisdiction in which it is sold. However, upon payment of the
26 costs of the condemnation proceedings and the execution and
27 delivery of a good and sufficient bond conditioned that the

1 pesticide or device shall not be sold or otherwise disposed of
2 contrary to this part or the laws of the jurisdiction in which
3 sold, the court may direct that the pesticide or device be deliv-
4 ered to the owner. The proceedings of condemnation cases shall
5 conform as near as possible to proceedings in admiralty, except
6 that either party may demand trial by jury of an issue of fact
7 joined in a case, and the proceedings shall be brought by and in
8 the name of the people of the state.

9 (4) If a decree of condemnation is entered against a pesti-
10 cide or device, court costs and fees, storage, and other proper
11 expenses shall be awarded against the person, if any, intervening
12 as claimant of the pesticide or device.

13 Sec. 3526. (1) A pesticide that is transported, sold,
14 exposed, or offered for sale in this state shall be in the
15 registrant's or manufacturer's unbroken immediate container and
16 have attached to it a label conforming to the labeling require-
17 ments as prescribed under section 3507, or the rules promulgated
18 under this part. However, the unbroken container requirement of
19 this subsection does not apply to an applicator who is transport-
20 ing a pesticide between the place of storage and the area of
21 application.

22 (2) A pesticide container shall be free from damage that
23 might render the pesticide unsafe.

24 (3) A pesticide that is required by rule to be colored or
25 discolored shall not be distributed, sold, exposed, or offered
26 for sale unless the pesticide is colored or discolored as
27 prescribed.

1 (4) A pesticide shall be handled, stored, displayed, or
2 transported in such a manner that it will not endanger human
3 beings and their environment or endanger food, feed, or other
4 products that may be stored, displayed, or transported with the
5 pesticide.

6 (5) A person shall not detach, alter, deface, or destroy in
7 whole, or in part, any label or labeling provided for in this
8 part or rules promulgated under this part or add a substance to,
9 or take a substance from a pesticide in a manner that may defeat
10 the purpose of this part or FIFRA.

11 (6) A vendor of pesticides shall keep on file, subject to
12 inspection by an authorized agent of the director of the depart-
13 ment of agriculture for a period of 1 year, all invoices, freight
14 bills, truckers' receipts, waybills, and similar shipping data
15 pertaining to pesticides that would establish date and origin of
16 the shipments.

17 Sec. 3527. A person shall not give false information in a
18 matter pertaining to this part, or resist, impede, or hinder the
19 director of the department of agriculture or his or her autho-
20 rized representatives in the discharge of their duties.

21 Sec. 3528. A person aggrieved by an order issued in pursu-
22 ance of this part may request a hearing pursuant to the adminis-
23 trative procedures act of 1969, Act No. 306 of the Public Acts of
24 1969, being sections 24.201 to 24.328 of the Michigan Compiled
25 Laws.

26 Sec. 3529. (1) The director of the department of
27 agriculture, upon finding after notice and an opportunity for a

1 hearing that a person has violated this part except sections
2 3511(2) and 3512, may impose an administrative fine of not more
3 than \$1,000.00 for each violation.

4 (2) If the director of the department of agriculture finds
5 that a violation occurred despite the exercise of due care or did
6 not result in significant harm to human health or the environ-
7 ment, the director of the department of agriculture may issue a
8 warning instead of imposing an administrative fine.

9 (3) The director of the department of agriculture shall
10 advise the attorney general of the failure of a person to pay an
11 administrative fine imposed under this section. The attorney
12 general shall bring an action in a court of competent jurisdic-
13 tion to recover the fine.

14 (4) A registrant, commercial applicator, registered applica-
15 tor, restricted use pesticide dealer, or a distributor who know-
16 ingly violates this part or a rule promulgated under this part is
17 guilty of a misdemeanor and shall be fined not more than
18 \$5,000.00 for each offense. A registrant, commercial applicator,
19 registered applicator, restricted use pesticide dealer, or a dis-
20 tributor who knowingly and with malicious intent violates this
21 part or a rule promulgated under this part is guilty of a misde-
22 meanor, and shall be fined not more than \$25,000.00 for each
23 offense. A private agricultural applicator or any other person
24 who knowingly violates this part or a rule promulgated under this
25 part is guilty of a misdemeanor, and shall be fined not more than
26 \$1,000.00 for each offense.

1 (5) The director of the department of agriculture may bring
2 an action to enjoin the violation or threatened violation of this
3 part or a rule promulgated under this part in a court of compe-
4 tent jurisdiction of the county in which the violation occurs or
5 is about to occur.

6 (6) The attorney general may file a civil action in which
7 the court may impose on any person who violates this part or a
8 rule promulgated under this part a civil fine of not more than
9 \$5,000.00 for each violation.

10 (7) In defense of an action filed under this section, in
11 addition to any other lawful defense, a person may present evi-
12 dence as an affirmative defense that, at the time of the alleged
13 violation, he or she was in compliance with label directions and
14 with this part and rules promulgated under this part.

15 (8) A civil cause of action does not arise for injuries to
16 any person or property if a private agricultural applicator, or a
17 registered applicator who stores, handles, or applies pesticides
18 only for a private agricultural purpose, was not grossly negli-
19 gent and stored, handled, or applied pesticides in compliance
20 with this part, rules promulgated under this part, and the pesti-
21 cide labeling.

22 (9) Applicable provisions of the revised judicature act of
23 1961, Act No. 236 of the Public Acts of 1961, being sections
24 600.101 to 600.9947 of the Michigan Compiled Laws, apply to civil
25 actions filed pursuant to this part.

26 Sec. 3530. The penalties provided for violations of this
27 part do not apply to any of the following:

1 (a) A carrier while lawfully engaged in transporting a
2 pesticide within this state, if the carrier, upon request, per-
3 mits the director of the department of agriculture to copy all
4 records showing the transactions in and movement of the pesticide
5 or devices.

6 (b) Public officials of this state and the federal govern-
7 ment while engaged in the performance of their official duties in
8 administering the state or federal pesticide laws or
9 regulations.

10 (c) A person who ships a substance or mixture of substances
11 being tested in which the only purpose is to determine its toxic-
12 ity or other properties and from which the user does not expect
13 to receive any pest control benefit from its use.

14 (d) The shipment or movement of an unregistered or canceled
15 pesticide for the specific purposes of disposal or storage.

16 Sec. 3531. A court shall not allow the recovery of damages
17 from an administrative action taken or an order stopping the sale
18 or use or requiring seizure if the court finds that there was
19 probable cause for the action or order.

20 Sec. 3532. (1) This part does not terminate or in any way
21 modify any liability, civil or criminal, that is in existence on
22 June 25, 1976.

23 (2) For the purposes of determining any penalty or liability
24 in respect to an act or omission occurring before June 25, 1976,
25 former Act No. 297 of the Public Acts of 1949, and former Act
26 No. 233 of the Public Acts of 1959, shall apply.

PART 37 PCB COMPOUNDS

Sec. 3701. As used in this part:

(a) "PCB" means the class of chlorinated biphenyl, terphenyl, higher polyphenyl, or mixtures of these compounds produced by replacing 2 or more hydrogen atoms on the biphenyl, terphenyl, or higher polyphenyl molecule with chlorine atoms. PCB does not include chlorinated biphenyls, terphenyls, higher polyphenyls, or mixtures of these compounds that have functional groups attached other than chlorine unless that functional group on the chlorinated biphenyls, terphenyls, higher polyphenyls, or mixtures thereof is determined to be dangerous to the public health, safety, and welfare under section 3705.

(b) "Ppm" means parts per million.

Sec. 3702. The director is responsible for the administration and implementation of this part to protect the public health, safety, and welfare from the toxic effects and environmental dangers of PCB. The director shall promulgate rules to implement and administer this part.

Sec. 3703. (1) Except as otherwise provided in this part, a person shall not sell or manufacture for sale in this state PCB.

(2) A person shall not sell, manufacture for sale, or use an item, product, or material in his or her business in this state if the item, product, or material contains a concentration of PCB equal to or greater than 100 ppm, except that:

(a) The director may by rule prescribe a lower maximum concentration of PCB for specific items, products, or materials if the director finds the 100 ppm concentration provided in this

1 subsection to be inadequate to protect the public health, safety,
2 and welfare from the toxic dangers of the PCB contained in that
3 item, product, or material. Not less than 10 days before the
4 public hearing on a proposed rule authorized by this subsection,
5 the director shall mail notice of the proposed rule and public
6 hearing to all manufacturers, sellers, and users of the specific
7 item, product, or material known to the director or that could be
8 ascertained by reasonable inquiry.

9 (b) An item, product, or material for which a lower maximum
10 concentration of PCB is prescribed by federal law, rule, or regu-
11 lation shall not contain a concentration of PCB higher than that
12 federal maximum.

13 (3) Notwithstanding subsections (1) and (2), PCB or an item,
14 product, or material containing PCB may be sold for use or used
15 in this state if it is used in a closed system as a dielectric
16 fluid for an electric transformer or capacitor pursuant to rules
17 promulgated by the director to insure the public health, safety,
18 and welfare. Upon adequate documentation of the availability of
19 reasonable substitutes that meet performance standards and envi-
20 ronmental acceptability, the director may, after holding public
21 hearings, modify these exclusions in whole or in part by rules
22 that require the phasing in of substitutes.

23 (4) Notwithstanding subsections (1) and (2), an item, prod-
24 uct, or material containing PCB may be manufactured for sale,
25 sold for use, or used in a business in this state pursuant to an
26 exemption certificate issued by the director under section 3704.

1 Sec. 3704. (1) A person may apply to the director for an
2 exemption certificate on a form provided by the director. The
3 director may require additional information or materials to
4 accompany the application as he or she considers necessary for an
5 accurate evaluation of the application.

6 (2) The director shall grant an exemption for residual
7 amounts of PCB's remaining in electric transformer cores after
8 the PCB in a transformer is drained and the transformer is filled
9 with a substitute approved by the director under section
10 3703(3). The director may grant an exemption for an item, prod-
11 uct, or material manufactured for sale, sold for use, or used by
12 the person in his business if the item, product, or material con-
13 tains incidental concentrations of PCB.

14 (3) As used in this section, "incidental concentrations of
15 PCB" means concentrations of PCB that are beyond the control of
16 the person and that are not the result of the person doing 1 or
17 more of the following:

18 (a) Exposing the item, product, or material to concentra-
19 tions of PCB.

20 (b) Failing to take reasonable measures to rid the item,
21 product, or material of concentrations of PCB.

22 (c) Failing to use a reasonable substitute for the item,
23 product, or material for which the exemption is sought.

24 (4) In granting a certificate of exemption, the director
25 shall impose conditions on the exemption in order that the exemp-
26 tion covers only incidental concentrations of PCB.

1 Sec. 3705. After receiving a recommendation by affirmative
2 majority vote of a special committee consisting of the director,
3 the director of commerce, and the director of the department of
4 public health, the director shall by rule determine, within the
5 concentrations prescribed by this act, whether the chlorinated
6 biphenyls, terphenyls, higher polyphenyls, or mixtures thereof
7 named in the recommendation and having certain functional groups
8 in addition to chlorine attached to the molecule constitute a
9 sufficient danger to the public health, safety, and welfare as to
10 be regulated as a PCB by this part.

11 Sec. 3706. A person shall not use an item, product, or
12 material containing a concentration of PCB equal to or greater
13 than 100 ppm in his or her business in this state unless the
14 person does both of the following:

15 (a) Files with the director a written notice of intent to
16 use the PCB or the item, product, or material containing PCB in
17 his or her business.

18 (b) Annually files with the director a report detailing the
19 total amount of PCB used by the person, and other information
20 required by rule of the director to protect the public health,
21 safety, and welfare from the toxic effects and environmental dan-
22 gers of PCB.

23 Sec. 3707. A person shall not manufacture for sale or sell
24 in this state an item, product, or material containing a concen-
25 tration of PCB equal to or greater than 100 ppm unless all of the
26 following have been complied with:

1 (a) The PCB or the item, product, or material containing PCB
2 is conspicuously labeled to disclose the presence of PCB, the
3 concentration of PCB, and other information required by rule of
4 the director to protect the public health, safety, and welfare
5 from the toxic effects and environmental dangers of PCB.

6 (b) The person files with the director a written notice of
7 intent to manufacture or sell the PCB or the item, product, or
8 material containing PCB.

9 (c) The person annually files with the director a report
10 detailing the total amount of PCB manufactured or sold by the
11 person, and other information required by rule of the director to
12 protect the public health, safety, and welfare from the toxic
13 effects and environmental dangers of PCB.

14 Sec. 3708. A person shall not dispose of solid or liquid
15 waste resulting from the use in his or her business of PCB or an
16 item, product, or material containing or which has contained a
17 concentration equal to or greater than 100 ppm of PCB except in
18 conformity with rules promulgated by the director.

19 Sec. 3709. (1) A person who violates this part or a rule
20 promulgated under this part is guilty of a misdemeanor, punish-
21 able by a fine of not less than \$2,500.00, or more than
22 \$25,000.00.

23 (2) Each day that a violation of this part or a rule promul-
24 gated under this part continues shall be considered a separate
25 violation.

26 Sec. 3710. (1) On or before January 1 of each year a person
27 subject to regulation under this part shall report to the

1 director the total cost to that person of the conversion from PCB
2 to substitute compounds that are approved by the director.

3 (2) The director shall compile the total cost of conversion
4 for all affected persons in the state. The statistics shall be
5 maintained by the department, and shall be reported annually to
6 the governor, the senate and house standing committees that con-
7 sider issues pertaining to the environment, and all members of
8 the legislature. In addition, the total annual cost shall be
9 published annually by the department.

10 PART 39 AIR POLLUTION CONTROL

11 Sec. 3901. As used in this part:

12 (a) "Commission" means the air pollution control
13 commission.

14 (b) "Air contaminant" means a dust, fume, gas, mist, odor,
15 smoke, vapor or any combination thereof.

16 (c) "Air pollution" means the presence in the outdoor atmo-
17 sphere of air contaminants in quantities, of characteristics and
18 under conditions and circumstances and of a duration that are or
19 can become injurious to human health or welfare, to animal life,
20 to plant life or to property, or which interferes with the enjoy-
21 ment of life and property in this state and excludes all aspects
22 of employer-employee relationships as to health and safety
23 hazards. With respect to any mode of transportation, this part
24 or the rules promulgated under this part shall not be inconsis-
25 tent with the federal regulations, emission limits, standards or
26 requirements on various modes of transportation. Air pollution
27 does not mean those usual and ordinary odors associated with a

1 farm operation within a zoned agricultural area if the person
2 engaged in the farm operation is following generally accepted
3 agricultural and management practices.

4 (d) "Air cleaning device" means any method, process or
5 equipment that removes, reduces or renders less noxious air con-
6 taminants discharged into the atmosphere.

7 (e) "Farm operation" has the meaning ascribed to it in the
8 Michigan right to farm act, Act No. 93 of the Public Acts of
9 1981, being sections 286.471 to 286.474 of the Michigan Compiled
10 Laws.

11 (f) "Generally accepted agricultural and management
12 practices" has the meaning ascribed to it in the Michigan right
13 to farm act, Act No. 93 of the Public Acts of 1981, being sec-
14 tions 286.471 to 286.474 of the Michigan Compiled Laws.

15 Sec. 3902. (1) To administer and implement certain provi-
16 sions of this part, an air pollution control commission is cre-
17 ated within the department. The air pollution control commission
18 shall consist of the director of the department of public health,
19 who shall act as chairperson of the air pollution control commis-
20 sion; the director; the director of the department of agricul-
21 ture; and 8 citizens of the state to be appointed by the governor
22 by and with the advice and consent of the senate. Each of the
23 state officers may designate a deputy of his or her department to
24 serve in his or her stead as a member of the air pollution con-
25 trol commission.

26 (2) Of the 8 citizens appointed by the governor, 2 shall be
27 representatives of industrial management, 1 of whom shall be a

1 licensed professional engineer trained and experienced in matters
2 of air pollution measurement and control; 2 shall be representa-
3 tives of local governing bodies, 1 of whom shall be a full-time
4 air pollution control officer; 1 shall be a licensed doctor of
5 medicine who is experienced and competent in the toxicology of
6 air contaminants; 1 shall be a member of organized labor and 2
7 shall be representatives of the general public.

8 (3) Each appointed member shall serve for a term of 3
9 years. Vacancies shall be filled for the unexpired terms in the
10 same manner as original appointments. Members of the air pollu-
11 tion control commission receive no compensation, but are entitled
12 to actual and necessary expenses incurred in the performance of
13 official duties under this part.

14 Sec. 3903. (1) The air pollution control commission shall
15 organize and promulgate rules governing the commission's formal
16 and informal procedures, and shall meet not less than twice each
17 year and shall keep a record of the proceedings and functions. A
18 special meeting of the air pollution control commission may be
19 called by the chairperson and shall be called upon receipt of a
20 written request signed by 2 or more members of the air pollution
21 control commission. Six members of the air pollution control
22 commission constitute a quorum to conduct business.

23 (2) The business which the air pollution control commission
24 may perform shall be conducted at a public meeting of the commis-
25 sion held in compliance with the open meetings act, Act No. 267
26 of the Public Acts of 1976, being sections 15.261 to 15.275 of
27 the Michigan Compiled Laws. Public notice of the time, date and

1 place of the meeting shall be given in the manner required by Act
2 No. 267 of the Public Acts of 1976.

3 (3) A writing prepared, owned, used, in the possession of,
4 or retained by the air pollution control commission in the per-
5 formance of an official function shall be made available to the
6 public in compliance with the freedom of information act, Act
7 No. 442 of the Public Acts of 1976, being sections 15.231 to
8 15.246 of the Michigan Compiled Laws.

9 Sec. 3904. (1) The air pollution control commission may do
10 each of the following:

11 (a) Establish standards for ambient air quality and for
12 emissions.

13 (b) Issue permits for the construction and the operation of
14 air pollution control facilities and source emissions and to
15 require reports of the operation of the air pollution control
16 facilities.

17 (c) Compel the attendance of witnesses at proceedings of the
18 commission upon reasonable notice.

19 (d) Make findings of fact and determinations.

20 (e) Make, modify, or cancel orders that require, in accord-
21 ance with this part, the control of air pollution.

22 (f) Accept, or when considered necessary by the air pollu-
23 tion control commission require to be submitted to it, and con-
24 sider for approval plans for air cleaning devices or any part
25 thereof and inspect the installation for compliance with the
26 plans.

1 (2) The department may do all of the following:

2 (a) Institute in a court of competent jurisdiction
3 proceedings to compel compliance with any rule or any determina-
4 tion or order promulgated under this part.

5 (b) Do such other things as it considers necessary, proper,
6 or desirable to enforce rules promulgated under this part.

7 (c) Enter and inspect any property at reasonable times and
8 places pursuant to reasonable notice for the purpose of investi-
9 gating either an actual or suspected source of air pollution or
10 ascertaining compliance or noncompliance with any rule that is
11 promulgated under this part. If in connection with an investiga-
12 tion or inspection, samples of air contaminants are taken for
13 analysis, a duplicate of the analytical report shall be furnished
14 promptly to the person who is suspected of causing the air
15 pollution.

16 (d) Receive and initiate complaints of air pollution in
17 alleged violation of any rule promulgated under this part and
18 take action with respect to the complaint as provided in this
19 part.

20 (e) Prepare and develop a general comprehensive plan for the
21 control or abatement of existing air pollution and for the con-
22 trol or prevention of any new air pollution.

23 (f) Encourage voluntary cooperation by all persons in con-
24 trolling air pollution and air contamination.

25 (g) Encourage the formulation and execution of plans by
26 cooperative groups of persons who severally or jointly are or may
27 be the source of air pollution, for the control of pollution.

1 (h) Cooperate with the appropriate agencies of the United
2 States or other states or any interstate agencies or interna-
3 tional agencies with respect to the control of air pollution and
4 air contamination, or for the formulation for the submission to
5 the legislature of interstate air pollution control compacts or
6 agreements.

7 (i) Conduct or cause to be conducted studies and research
8 with respect to air pollution control, abatement or prevention.

9 (j) Conduct and supervise programs of air pollution control
10 education including the preparation and distribution of informa-
11 tion relating to air pollution control.

12 (k) Determine by means of field studies and sampling the
13 degree of air pollution in the state.

14 (l) Provide advisory technical consultation services to
15 local communities.

16 (m) Serve as the agency of the state for the receipt of
17 money from the federal government or other public or private
18 agencies and to expend that money after it is appropriated for
19 the purpose of air pollution control studies or research or the
20 enforcement of this part.

21 Sec. 3905. (1) Beginning June 6, 1991 or on the effective
22 date of the rules promulgated under subsection (5), whichever is
23 later, a facility that incinerates medical waste shall not be
24 operated unless the facility has an operating permit issued by
25 the air pollution control commission.

26 (2) An application for an operating permit under subsection
27 (1) shall be submitted in the form and contain the information

1 required by the air pollution control commission. The air
2 pollution control commission shall issue an operating permit only
3 if the facility is in compliance with this part and the rules
4 promulgated under this part.

5 (3) A permit issued under this section is valid for
6 5 years. The air pollution control commission may renew a permit
7 upon the expiration of the permit.

8 (4) Within 2 years after the effective date of the rules
9 promulgated under subsection (5), the air pollution control com-
10 mission shall review all operating permits issued under this part
11 for facilities that incinerate medical waste that were issued
12 permits prior to the promulgation of the rules under
13 subsection (5). If, upon review, the air pollution control com-
14 mission determines that the facility does not meet the require-
15 ments of the rules promulgated under subsection (5) and cannot be
16 retrofitted to comply with these rules, the air pollution control
17 commission shall issue an interim operating permit that is valid
18 for 2 years only. If the facility only needs retrofitting in
19 order to comply with the rules, the facility shall be granted an
20 interim permit that is valid for 1 year only. However, in either
21 case the facility shall comply with this part and all other rules
22 promulgated under this part for the interim period. An interim
23 operating permit shall provide that if the facility is within
24 50 miles of another facility that is in compliance with the rules
25 promulgated under subsection (5), the facility operating under
26 the interim operating permit may receive only medical waste that
27 is generated on the site of that facility, at a facility owned

1 and operated by the person who owns and operates that facility,
2 or at the private practice office of a physician who has privi-
3 leges to practice at that facility, if the facility is a
4 hospital. The air pollution control commission shall renew an
5 operating permit for a facility only if the facility is in com-
6 pliance with this part and the rules promulgated under this
7 part.

8 (5) The air pollution control commission shall promulgate
9 rules to do both of the following:

10 (a) Regulate facilities that incinerate medical waste.

11 These rules shall address at least all of the following:

12 (i) Incinerator design and operation.

13 (ii) Ash handling and quality.

14 (iii) Stack design.

15 (iv) Requirements for receiving medical waste from genera-
16 tors outside the facility.

17 (v) Air pollution control requirements.

18 (vi) Performance monitoring and testing.

19 (vii) Record-keeping and reporting requirements.

20 (viii) Inspection and maintenance.

21 (b) Regulate the operation of facilities that incinerate
22 only pathological waste and limited other permitted solid waste.

23 (6) A permit issued under this section may allow a facility
24 to receive pathological or medical wastes that were generated off
25 the site of the facility. However, the owner or operator of the
26 facility shall keep monthly records of the source of the wastes

1 and the approximate volume of the wastes received by the
2 facility.

3 (7) As used in this section:

4 (a) "Medical waste" means that term as it is defined in
5 part 138 of the public health code, Act No. 368 of the Public
6 Acts of 1978, being sections 333.13801 to 333.13831 of the
7 Michigan Compiled Laws.

8 (b) "Pathological waste" means that term as it is defined in
9 part 138 of the public health code.

10 Sec. 3906. The director shall act as the authorized agent
11 for the air pollution control commission in assisting the air
12 pollution control commission in the performance of its duties
13 under this part. All investigative, technical, scientific, and
14 other services shall be performed by the director or his or her
15 authorized deputies.

16 Sec. 3907. (1) A rule or amendment or repeal of a rule or
17 amendment shall require a vote of approval in writing of not less
18 than 6 members of the commission.

19 (2) The commission shall promulgate rules for all of the
20 following purposes:

21 (a) Controlling or prohibiting air pollution.

22 (b) Complying with the federal clean air act, chapter 360,
23 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492,
24 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to
25 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612,
26 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to
27 7651o, 7661 to 7661f, and 7671 to 7671q.

1 (c) Controlling any mode of transportation that is capable
2 of causing or contributing to air pollution.

3 (d) Reviewing proposed locations of stationary emission
4 sources.

5 (e) Reviewing modifications of existing emission sources.

6 (f) Prohibiting locations or modifications of emission
7 sources which impair the state's ability to meet federal ambient
8 air standards.

9 (g) Establishing suitable emission standards consistent with
10 ambient air quality standards established by the federal govern-
11 ment and factors, including, but not limited to, conditions of
12 the terrain, wind velocities and directions, land usage of the
13 region, and the anticipated characteristics and quantities of
14 potential air pollution sources. This part does not prohibit the
15 air pollution control commission from denying or revoking a
16 permit to operate a control facility that would adversely affect
17 human health or other conditions important to the life of the
18 community.

19 Sec. 3908. Notwithstanding any other provision of this part
20 or the rules promulgated under this part, car ferries having the
21 capacity to carry more than 110 motor vehicles and coal-fueled
22 trains used in connection with tourism or an historical museum,
23 or carrying works of art or items of historical interest are not
24 subject to regulation under this part.

25 Sec. 3909. (1) If a written complaint is filed with the
26 director and the director believes, or if the director believes
27 that any person is violating this part or any rule promulgated

1 under this part by causing or permitting air pollution, the
2 director shall make a prompt investigation. If after this inves-
3 tigation the director finds that a violation of any rule promul-
4 gated under this part exists, the director shall attempt to enter
5 into a voluntary agreement with the person as provided in subsec-
6 tion (2).

7 (2) In consideration of this section or other sections of
8 this part, the director, after due notice and opportunity for
9 public hearing, may enter into a voluntary agreement or a per-
10 formance contract with a person to abate pollution under condi-
11 tions agreed upon by the director and the person. This agreement
12 may provide for the enforcement of its terms by specific
13 performance.

14 (3) If in the opinion of the director the person violates
15 the terms of the agreement or contract, the director can proceed
16 to enforce the conditions of the agreement or contract by order
17 or by the institution in a court of competent jurisdiction of an
18 action for specific performance or such other legal or equitable
19 relief as the director considers appropriate.

20 (4) Whenever a person other than a party to the agreement
21 feels aggrieved by an agreement entered pursuant to subsection
22 (2), he or she may file a sworn petition with the director within
23 30 days of the issuance of notice of the agreement setting forth
24 the grounds and reasons for his or her complaint and asking for a
25 hearing of the matter involved. The director shall set a date
26 for a hearing to be held not more than 60 days from the date the
27 petition is filed and shall notify the petitioner of the date of

1 the hearing. At the hearing the petitioner and any other
2 interested party may appear, present witnesses, and submit
3 evidence. A final order or determination of the director upon
4 the matter following the hearing is conclusive, unless reviewed
5 in accordance with the administrative procedures act of 1969, Act
6 No. 306 of the Public Acts of 1969, being sections 24.201 to
7 24.328 of the Michigan Compiled Laws, in the circuit court for
8 the county of Ingham or for the county in which the person
9 resides.

10 Sec. 3910. If a voluntary agreement under section 3909 is
11 not entered into within a reasonable time, set by the air pollu-
12 tion control commission, the air pollution control commission may
13 issue and serve upon the person complained against a written
14 notice, together with a copy of the complaint, which shall spec-
15 ify the facts which are the basis for the alleged violation and a
16 proposed order for corrective action that states the time sched-
17 ule and standards or rules that are to be met by the person com-
18 plained against. If a person who is served with a complaint and
19 proposed order agrees with the proposed restrictions of polluting
20 content, waste or pollution and period of time for abatement of
21 pollution that the air pollution control commission considers
22 necessary, and notifies the air pollution control commission
23 thereof before the date set for hearing, unless the person com-
24 plained against requests a hearing before the air pollution con-
25 trol commission within 30 days after he or she receives the
26 order, disposition of the case may be made with the approval of
27 the air pollution control commission by stipulation or consent

1 order without further hearing. An order adopted by the air
2 pollution control commission is final.

3 Sec. 3911. (1) The respondent to the complaint under
4 section 3910 may file a written answer to the complaint and may
5 appear at the hearing in person or by representative, with or
6 without counsel, and may submit testimony, or may do both.

7 (2) The air pollution control commission on behalf of a
8 party may subpoena and compel the attendance of witnesses, and
9 require the production for examination of any book or paper
10 relating to the matter under investigation at the hearing. The
11 subpoena shall only be issued after application to the circuit
12 court having jurisdiction and with the approval of the court.

13 (3) The testimony taken at the hearing before the air pollu-
14 tion control commission or its presiding officer shall be under
15 oath and recorded.

16 (4) A hearing on a contested matter held pursuant to this
17 act shall be held pursuant to the administrative procedures act
18 of 1969, Act No. 306 of the Public Acts of 1969, being sections
19 24.201 to 24.328 of the Michigan Compiled Laws.

20 Sec. 3912. (1) Public hearings with reference to pollution
21 control may be held before any member of the air pollution con-
22 trol commission or their designated delegates or
23 representatives. Persons designated to conduct the hearing as
24 presiding officers shall be disinterested and technically quali-
25 fied persons.

26 (2) If a record, permit application, or other information
27 that is furnished to or is obtained by the air pollution control

1 commission concerning 1 or more air contaminant sources is
2 certified by the owner or operator, that the record, permit
3 application, or information that relates to production, sales
4 figures, or to processes are unique to the owner or operator or
5 would tend to affect adversely the competitive position of the
6 owner or operator, or if information relating to secret pro-
7 cesses, production or methods of manufacture is obtained in the
8 course of an in-plant inspection, then the record, permit appli-
9 cation or information shall be only for the confidential use of
10 the air pollution control commission and the director in the
11 administration of this part, unless the owner or operator
12 expressly agrees to its publication or availability to the gen-
13 eral public. This does not prevent the use of a record, permit
14 application or information by the air pollution control commis-
15 sion or director in compiling or publishing analyses or summaries
16 relating to the general condition of the outdoor atmosphere if
17 the analyses or summaries do not identify an owner or operator or
18 reveal information that is otherwise confidential under this
19 section. This section does not render data on the quantity or
20 quality of emissions from any source confidential. The data on
21 amount and nature of emissions from each source is public
22 information.

23 Sec. 3913. Application for relief from any rule or order
24 issued under this part shall be made by petition to the circuit
25 court for the county of Ingham, or to the county in which the
26 petitioner resides. The petition shall be verified as in a civil
27 action. Each petition shall contain a plain and concise

1 statement of the material facts on which the petitioner relies
2 and shall set forth the rule or order or part of the rule or
3 order that he or she claims to be unreasonable or prejudicial to
4 him or her and shall specify the grounds upon which the peti-
5 tioner relies. The petition may be accompanied by affidavits or
6 other written proof and shall demand the relief to which the
7 petitioner alleges he or she is entitled, in the alternative or
8 otherwise. The petition may be made by any 1 or more persons,
9 jointly or severally, who are aggrieved by any rule or order
10 whether or not the petitioner is or was a party to the proceeding
11 in which the rule was adopted under this part.

12 Sec. 3914. When the director finds that a person is dis-
13 charging or causing to be discharged into the atmosphere directly
14 or indirectly any air contaminant and the discharge constitutes
15 an immediate and serious danger to the health, safety and welfare
16 of the people and that it appears to be prejudicial to the inter-
17 ests of the people of the state to delay action, the director
18 shall notify the person by written notice that he or she must
19 discontinue immediately the air pollution. Within not more than
20 15 days, the director shall provide the person the opportunity to
21 be heard and to present any proof that the discharge does not
22 constitute a danger to the health, safety and welfare of the
23 people.

24 Sec. 3915. (1) This section, including subsection (2),
25 shall apply to any fugitive dust source at all mining operations,
26 standard industrial classification major groups 10 through 14;
27 manufacturing operations, standard industrial classification

1 major groups 20 through 39; railroad transportation, standard
2 industrial classification major group 40; motor freight transpor-
3 tation and warehousing, standard industrial classification major
4 group 42; electric services, standard industrial classification
5 group 491; sanitary services, standard industrial classification
6 group 495; and steam supply, standard industrial classification
7 group 496, which are located in areas listed in table 36 of
8 R 336.1371 of the Michigan administrative code.

9 (2) Except as provided in subsection (8), a person responsi-
10 ble for any fugitive dust source regulated under this section
11 shall not cause or allow the emission of fugitive dust from any
12 road, lot, or storage pile, including any material handling
13 activity at a storage pile, that has an opacity greater than 5%
14 as determined by reference test method 9d. Except as otherwise
15 provided in subsection (8) or this section, a person shall not
16 cause or allow the emission of fugitive dust from any other fugi-
17 tive dust source that has an opacity greater than 20% as deter-
18 mined by test method 9d. The provisions of this subsection shall
19 not apply to storage pile material handling activities when wind
20 speeds are in excess of 25 miles per hour (40.2 kilometers per
21 hour).

22 (3) In addition to the requirements of subsection (2), and
23 except as provided in subdivisions (e), (f), and (g), a person
24 shall control fugitive dust emissions in a manner that results in
25 compliance with all of the following provisions:

1 (a) Potential fugitive dust sources shall be maintained and
2 operated so as to comply with all of the following applicable
3 provisions:

4 (i) All storage piles of materials, where the total uncon-
5 trolled emissions of fugitive dust from all such piles at a
6 facility is in excess of 50 tons per year and where such piles
7 are located within a facility with potential particulate emis-
8 sions from all sources including fugitive dust sources and all
9 other sources exceeding 100 tons per year, shall be protected by
10 a cover or enclosure or sprayed with water or a surfactant solu-
11 tion, or treated by an equivalent method, in accordance with the
12 operating program required by subsection (4).

13 (ii) All conveyor loading operations to storage piles speci-
14 fied in subparagraph (i) shall utilize spray systems, telescopic
15 chutes, stone ladders, or other equivalent methods in accordance
16 with the operating program required by subsection (4). Batch
17 loading operations to storage piles specified in subparagraph (i)
18 shall utilize spray systems, limited drop heights, enclosures, or
19 other equivalent methods in accordance with the operating program
20 required by subsection (4). Unloading operations from storage
21 piles specified in subparagraph (i) shall utilize rake reclaim-
22 ers, bucket wheel reclaimers, under-pile conveying, pneumatic
23 conveying with baghouse, water sprays, gravity-feed plow reclaim-
24 er, front-end loaders with limited drop heights, or other equiva-
25 lent methods in accordance with the operating program required by
26 subsection (4).

1 (iii) all traffic pattern access areas surrounding storage
2 piles specified in subparagraph (i) and all traffic pattern roads
3 and parking facilities shall be paved or treated with water,
4 oils, or chemical dust suppressants. All paved areas, including
5 traffic pattern access areas surrounding storage piles specified
6 in subparagraph (i), shall be cleaned in accordance with the
7 operating program required by subsection (4). All areas treated
8 with water, oils, or chemical dust suppressants shall have the
9 treatment applied in accordance with the operating program
10 required by subsection (4).

11 (iv) all unloading and transporting operations of materials
12 collected by pollution control equipment shall be enclosed or
13 shall utilize spraying, pelletizing, screw conveying, or other
14 equivalent methods.

15 (v) Crushers, grinding mills, screening operations, bucket
16 elevators, conveyor transfer points, conveyor bagging operations,
17 storage bins, and fine product truck and railcar loading opera-
18 tions shall be sprayed with water or a surfactant solution, uti-
19 lize choke-feeding, or be treated by an equivalent method in
20 accordance with an operating program required under
21 subsection (4). This subparagraph shall not apply to high-lines
22 at steel mills.

23 (b) If particulate collection equipment is operated pursuant
24 to this section, emissions from such equipment shall not exceed
25 0.03 grains per dry standard cubic foot (0.07 grams per cubic
26 meter).

1 (c) A person shall not cause or allow the operation of a
2 vehicle for the transporting of bulk materials with a silt
3 content of more than 1% without employing 1 or more of the fol-
4 lowing control methods:

5 (i) The use of completely enclosed trucks, tarps, or other
6 covers for bulk materials with a silt content of 20% or more by
7 weight.

8 (ii) The use of tarps, chemical dust suppressants, or water
9 in sufficient quantity to maintain the surface in a wet condition
10 for bulk materials with a silt content of more than 5% but less
11 than 20%.

12 (iii) Loading trucks so that no part of the load making con-
13 tact with any sideboard, side panel, or rear part of the load
14 comes within 6 inches of the top part of the enclosure for bulk
15 materials with a silt content of more than 1% but not more than
16 5%.

17 (d) All vehicles for transporting bulk materials off-site
18 shall be maintained in such a way as to prevent leakage or spill-
19 age and shall comply with the requirements of section 720 of the
20 Michigan vehicle code, Act No. 300 of the Public Acts of 1949,
21 being section 257.720 of the Michigan Compiled Laws, and with
22 R 28.1457 of the Michigan administrative code.

23 (e) Subdivisions (c) and (d) do not apply to vehicles with
24 less than a 2-ton capacity that are used to transport sand,
25 gravel, stones, peat, or topsoil.

1 (f) Subdivision (c)(i) and (ii) do not apply to fly ash
2 which has been thoroughly wetted and has the property of forming
3 a stable crust upon drying.

4 (g) Subdivision (c) does not apply to the transportation of
5 iron or steel slag if the vehicles do not leave the facility and
6 the slag has a temperature of 200 degrees fahrenheit or greater.

7 (4) All fugitive dust sources subject to this section shall
8 be operated in compliance with both the provisions of an operat-
9 ing program that shall be prepared by the owner or operator of
10 the source and submitted to the commission and with applicable
11 provisions of this section. Such operating program shall be
12 designed to significantly reduce the fugitive dust emissions to
13 the lowest level that a particular source is capable of achieving
14 by the application of control technology that is reasonably
15 available, considering technological and economic feasibility.
16 The operating program shall be implemented upon the approval of
17 the air pollution control commission.

18 (5) The operating program required by subsection (4) is
19 subject to review and approval or disapproval by the air pollu-
20 tion control commission and shall be considered approved if not
21 acted on by the air pollution control commission within 90 days
22 of submittal. All programs approved by the air pollution control
23 commission shall become a part of a legally enforceable order or
24 as part of an approved permit to install or operate. At a mini-
25 mum, the operating program shall include all of the following:

26 (a) The name and address of the facility.

1 (b) The name and address of the owner or operator
2 responsible for implementation of the operating program.

3 (c) A map or diagram of the facility showing all of the
4 following:

5 (i) Approximate locations of storage piles.

6 (ii) Conveyor loading operations.

7 (iii) All traffic patterns within the facility.

8 (d) The location of unloading and transporting operations
9 with pollution control equipment.

10 (e) A detailed description of the best management practices
11 utilized to achieve compliance with this section, including an
12 engineering specification of particulate collection equipment,
13 application systems for water, oil, chemicals, and dust suppres-
14 sants utilized, and equivalent methods utilized.

15 (f) A test procedure, including recordkeeping, for testing
16 all waste or recycled oils used for fugitive dust control for
17 toxic contaminants.

18 (g) The frequency of application, application rates, and
19 dilution rates if applicable, of dust suppressants by location of
20 materials.

21 (h) The frequency of cleaning paved traffic pattern roads
22 and parking facilities.

23 (i) Other information as may be necessary to facilitate the
24 commission's review of the operating program.

25 (6) Except for fugitive dust sources operating programs
26 approved by the air pollution control commission pursuant to
27 R 336.1373 of the Michigan administrative code between April 23,

1 1985 and May 12, 1987, the owner or operator of a source shall
2 submit the operating program required by subsection (4) to the
3 air pollution control commission by August 12, 1987.

4 (7) The operating program required by subsection (4) shall
5 be amended by the owner or operator so that the operating program
6 is current and reflects any significant change in the fugitive
7 dust source or fugitive dust emissions. An amendment to an oper-
8 ating program shall be consistent with the requirements of this
9 section and shall be submitted to the air pollution control com-
10 mission for its review and approval or disapproval.

11 (8) Upon request by the owner or operator of a fugitive dust
12 source, the air pollution control commission may establish alter-
13 nate provisions to those specified in this section, if all of the
14 following conditions are met:

15 (a) The fugitive dust emitting process, operation, or activ-
16 ity is subject to either of the following:

17 (i) The opacity limits of subsection (2).

18 (ii) The spray requirements of subsection (3)(a)(i) to (v).

19 (b) An alternate provision shall not be established by the
20 commission unless the air pollution control commission is reason-
21 ably convinced of all of the following:

22 (i) That a fugitive dust emitting process, operation, or
23 activity subject to the alternate provisions is in compliance or
24 on a legally enforceable schedule of compliance with the other
25 rules of the air pollution control commission.

26 (ii) That compliance with the provisions of this section is
27 not technically or economically reasonable.

1 (iii) That reasonable measures to reduce fugitive emissions
2 as required by this section have been implemented in accordance
3 with or will be implemented in accordance with a schedule
4 approved by the director.

5 (9) Any alternate provisions approved by the commission pur-
6 suant to subsection (8) shall be submitted to the United States
7 environmental protection agency as an amendment to the state
8 implementation plan.

9 Sec. 3916. As used in section 3915:

10 (a) "Control equipment or pollution control equipment" has
11 the meaning ascribed to control equipment in R 336.1103 of the
12 Michigan administrative code.

13 (b) "Fine product" means materials which will pass through a
14 20-mesh screen or those particles with aerodynamic diameters of
15 830 microns or less.

16 (c) "Fugitive dust" has the meaning ascribed to it in
17 R 336.1106 of the Michigan administrative code.

18 (d) "Fugitive dust source" means any fugitive dust emitting
19 process, operation, or activity regulated under section 3915.

20 (e) "Opacity" has the meaning ascribed to it in R 336.1115
21 of the Michigan administrative code.

22 (f) "Particulate" means any air contaminant existing as a
23 finely divided liquid or solid, other than uncombined water, as
24 measured by a reference test specified in subsection (5) of
25 R 336.2004 of the Michigan administrative code or by an equiva-
26 lent or alternative method.

1 (g) "Potential particulate emissions" means those emissions
2 of particulate matter expected to occur without control
3 equipment, unless such control equipment is, aside from air pol-
4 lution control requirements, vital to the production of the
5 normal product of the source or to its normal operation. Annual
6 potential particulate emissions shall be based on the maximum
7 annual-rated capacity of the source, unless the source is subject
8 to enforceable permit conditions or enforceable orders which
9 limit the operating rate or the hours of operation or both.
10 Enforceable agreements or permit conditions on the type or amount
11 of materials combusted or processed shall be used in determining
12 the potential particulate emission rate of a source.

13 (h) "Process" or "process equipment" has the meaning
14 ascribed to it in R 336.1116 of the Michigan administrative
15 code.

16 (i) "Silt content" means that portion, by weight, of a par-
17 ticulate material which will pass through a number 200 (75
18 micron) wire sieve as determined by the American society of test-
19 ing material, test C-136-76.

20 (j) "Test method 9D" means the method by which visible emis-
21 sions of fugitive dust shall be determined according to test
22 method 9, entitled visual determination of the opacity of emis-
23 sions from stationary sources, as set forth in appendix A-test
24 methods to 40 C.F.R. part 60, with the following modifications:

25 (i) The data reduction provisions of section 2.5 of method 9
26 shall be based on an average of 12 consecutive readings recorded
27 at 15-second intervals.

1 (ii) For roadways and parking lots, opacity observations
2 shall be made from a position such that the observer's line of
3 vision is approximately perpendicular to the plume direction and
4 approximately 4 feet directly above the surface of the road or
5 parking area from which the emissions are being generated. The
6 observer shall not look continuously at the plume, but instead
7 shall observe the plume momentarily at 15-second intervals at the
8 point of maximum plume density. Consecutive readings must be
9 suspended for any 15-second period if a vehicle is in the
10 observer's line of sight. If this occurs, a "V" shall be used in
11 lieu of a numerical value, and a footnote shall be made to indi-
12 cate that "V" signifies that the observer's view was obstructed
13 by a vehicle. Readings shall continue at the next 15-second
14 period, and they shall be considered consecutive to the reading
15 immediately preceding the 15-second period denoted by a "V".
16 Consecutive readings also shall be suspended for any 15-second
17 period if a vehicle passes through the area traveling in the
18 opposite direction and creates a plume that is intermixed with
19 the plume being read. If this occurs, an "I" shall be used in
20 lieu of a numerical value, and a footnote shall be made to indi-
21 cate that "I" signifies that the readings were terminated due to
22 interference from intermixed plumes. Readings shall continue
23 when, in the judgment of the observer, the plume created by the
24 vehicle traveling in the opposite direction no longer interferes
25 with the plume originally being read; and they shall be consid-
26 ered consecutive to the reading immediately preceding the
27 15-second period denoted by an "I". Intermixing of plumes from

1 vehicles traveling in the same direction represents the road
2 conditions, and reading shall continue in the prescribed manner.
3 A reading encompassing an unusual condition (such as a broken bag
4 of cement on the pavement) cannot be used to represent the entire
5 surface condition involved. In such cases, another set of read-
6 ings, encompassing the average surface condition, must be
7 conducted. For all other fugitive dust sources except roadways
8 and parking lots, opacity observations shall be made from a posi-
9 tion that provides the observer a clear view of the source and
10 the fugitive dust with the sun behind the observer. A position
11 at least 15 feet from the source is recommended. To the extent
12 possible, the line of sight should be approximately perpendicular
13 to the flow of fugitive dust and to the longer axis of the
14 emissions. Opacity observations shall be made for the point of
15 highest opacity within the fugitive dust. Since the highest
16 opacity usually occurs immediately above or downwind of the
17 source, the observer should normally concentrate on the area or
18 areas of the plume close to the source.

19 Sec. 3917. A person who fails to obtain or comply with a
20 permit, or comply with a final order or order of determination of
21 the air pollution control commission under this part is guilty of
22 a misdemeanor, and shall be fined not more than \$10,000.00 and in
23 the discretion of the court an additional amount of not more than
24 \$2,000.00 per day a violation continues. The circuit court of
25 the county in which the violation occurred has exclusive
26 jurisdiction. However, the person is not subject to the
27 penalties of this section if the discharge of the emissions are

1 in conformance with and obedient to a rule, voluntary agreement,
2 or order of the air pollution control commission. Upon petition
3 by the director, the circuit court in the county where the viola-
4 tion exists may order a person to be restrained from continuing a
5 violation. In addition the attorney general may, at the request
6 of the director, file an action in a court of competent jurisdic-
7 tion to recover the full value of the injuries done to the natu-
8 ral resources of the state and the costs of surveillance and
9 enforcement by the state resulting from the violation. In addi-
10 tion to any fine, the court in its discretion may impose proba-
11 tion upon any person for a violation of this section.

12 Sec. 3918. The director may bring any appropriate action in
13 the name of the people of the state as may be necessary to carry
14 out this part and to enforce this part and the rules promulgated
15 under this part.

16 Sec. 3919. The penalties or fines that are imposed pursuant
17 to this part upon persons violating a rule promulgated under this
18 part do not include a violation that was caused by an act of God,
19 war, strike, riot, catastrophe, or other condition as to which
20 negligence or willful misconduct on the part of the person was
21 not the proximate cause.

22 Sec. 3920. Notwithstanding any other provision of this
23 part, the director may suspend the enforcement of the whole or
24 any part of any rule if a person shows that the enforcement of
25 the rule would be inequitable or unreasonable as to that person,
26 or the director may suspend the enforcement for any reason
27 considered by the director to be sufficient to show that

1 enforcement would result in an unreasonable hardship upon the
2 person; and upon any suspension of the whole or any part of the
3 rule the director shall grant to the person a variance from that
4 rule.

5 Sec. 3921. In determining under what conditions and to what
6 extent a variance from a rule may be granted, the director shall
7 give due recognition to the progress that the person requesting
8 the variance has made in eliminating or preventing air
9 pollution. The director shall consider the reasonableness of
10 granting a variance conditioned upon the person effecting a par-
11 tial control of the particular air pollution or a progressive
12 control of the air pollution over a period of time that it con-
13 sidered reasonable under all the circumstances; or the director
14 may prescribe other and different reasonable requirements with
15 which the person receiving the variance shall comply.

16 Sec. 3922. The director shall grant a variance from any
17 rule to, and suspend the enforcement of that rule as to, any
18 person who shows in the case of the person and of the activity
19 which the person operates that a compliance with the rule, and
20 that the acquisition, installation, operation, and maintenance of
21 facilities and equipment required or necessary to accomplish the
22 compliance, would constitute an undue hardship on the person and
23 would be out of proportion to the benefits to be obtained by
24 compliance. A variance shall not be granted under this section
25 if the person applying for the variance is causing air pollution
26 that is injurious to the public health. A variance that is
27 granted shall not be construed to relieve the person who receive

1 it from any liability imposed by other law for the commission or
2 maintenance of a nuisance.

3 Sec. 3923. A variance granted pursuant to this part shall
4 be granted for a period of time, not to exceed 1 year, as speci-
5 fied by the director at the time of granting the variance.
6 However, a variance may be continued from year to year. A vari-
7 ance granted by the director may be granted on the condition that
8 the person receiving it reports to the director periodically, as
9 the director specifies, as to the progress that the person has
10 made toward reaching a compliance with the rule of the air pollu-
11 tion control commission.

12 Sec. 3924. The director may revoke or modify by written
13 order, after a public hearing held upon not less than 10 days'
14 notice, any order permitting a variance.

15 Sec. 3925. It is the purpose of this part to provide addi-
16 tional and cumulative remedies to prevent and abate air
17 pollution. This part does not abridge or alter existing rights
18 of action or remedies. This part shall not be construed as
19 estopping individuals, counties, cities, townships or villages or
20 other governmental units from the exercise of their respective
21 rights to suppress nuisances or to prevent or abate air
22 pollution.

23 Sec. 3926. This part is ancillary to and supplementing the
24 laws now in force, except laws that are in direct conflict with
25 this part. The final order or determination of the air pollution
26 control commission shall not be used in evidence of presumptive

1 air pollution in any suit filed by any person other than the air
2 pollution control commission.

3 Sec. 3927. (1) This part or any rule that is promulgated
4 under this part does not invalidate any existing ordinances or
5 regulations having requirements equal to or greater than the min-
6 imum applicable requirements of this part or prevent any politi-
7 cal subdivision from adopting similar provisions if their
8 requirements are equal to or greater than the minimum applicable
9 requirements of this part.

10 (2) When a political subdivision or enforcing official of a
11 political subdivision fails to enforce properly the political
12 subdivision's ordinances, laws, or regulations that do afford
13 equal protection to the public as that provided in this part, the
14 director, after consultation with the local official or governing
15 body of the political subdivision may take appropriate action as
16 may be necessary for enforcement of the applicable provisions of
17 this part.

18 (3) The director shall counsel and advise local units of
19 government on the administration of this part. The director
20 shall cooperate in the enforcement of this part with local offi-
21 cials upon request.

22 PART 43 MICHIGAN ENVIRONMENTAL PROTECTION ACT

23 Sec. 4301. (1) The attorney general or any person may main-
24 tain an action in the circuit court having jurisdiction where the
25 alleged violation occurred or is likely to occur for declaratory
26 and equitable relief against any person for the protection of the

1 air, water, and other natural resources and the public trust in
2 these resources from pollution, impairment, or destruction.

3 (2) In granting relief provided by subsection (1), if there
4 is a standard for pollution or for an anti-pollution device or
5 procedure, fixed by rule or otherwise, by the state or an instru-
6 mentality, agency, or political subdivision of the state, the
7 court may:

8 (a) Determine the validity, applicability, and reasonable-
9 ness of the standard.

10 (b) If a court finds a standard to be deficient, direct the
11 adoption of a standard approved and specified by the court.

12 Sec. 4302. If the court has reasonable ground to doubt the
13 solvency of the plaintiff or the plaintiff's ability to pay any
14 cost or judgment that might be rendered against him or her in an
15 action brought under this part, the court may order the plaintiff
16 to post a surety bond or cash of not more than \$500.00.

17 Sec. 4303. (1) When the plaintiff in the action has made a
18 prima facie showing that the conduct of the defendant has, or is
19 likely to pollute, impair, or destroy the air, water, or other
20 natural resources, or the public trust in these resources, the
21 defendant may rebut the prima facie showing by the submission of
22 evidence to the contrary. The defendant may also show, by way of
23 an affirmative defense, that there is no feasible and prudent
24 alternative to defendant's conduct and that his or her conduct is
25 consistent with the promotion of the public health, safety, and
26 welfare in light of the state's paramount concern for the
27 protection of its natural resources from pollution, impairment,

1 or destruction. Except as to the affirmative defense, the
2 principles of burden of proof and weight of the evidence gener-
3 ally applicable in civil actions in the circuit courts apply to
4 actions brought under this part.

5 (2) The court may appoint a master or referee, who is a dis-
6 interested person and technically qualified, to take testimony
7 and make a record and a report of his or her findings to the
8 court in the action.

9 (3) Costs may be apportioned to the parties if the interests
10 of justice require.

11 Sec. 4304. (1) The court may grant temporary and permanent
12 equitable relief, or may impose conditions on the defendant that
13 are required to protect the air, water, and other natural
14 resources, or the public trust in these resources from pollution,
15 impairment, or destruction.

16 (2) If administrative, licensing, or other proceedings are
17 required or available to determine the legality of the
18 defendant's conduct, the court may direct the parties to seek
19 relief in such proceedings. Proceedings described in this sub-
20 section shall be conducted in accordance with and subject to the
21 administrative procedures act of 1969, Act No. 306 of the Public
22 Acts of 1969, being sections 24.201 to 24.328 of the Michigan
23 Compiled Laws. If the court directs parties to seek relief as
24 provided in this section, the court may grant temporary equitable
25 relief if necessary for the protection of the air, water, and
26 other natural resources, or the public trust in these resources
27 from pollution, impairment, or destruction. In addition, the

1 court retains jurisdiction of the action pending completion of
2 the action to determine whether adequate protection from pollu-
3 tion, impairment, or destruction is afforded.

4 (3) Upon completion of proceedings described in this sec-
5 tion, the court shall adjudicate the impact of the defendant's
6 conduct on the air, water, or other natural resources, and on the
7 public trust in these resources in accordance with this part. In
8 adjudicating an action, the court may order that additional evi-
9 dence be taken to the extent necessary to protect the rights rec-
10 ognized in this part.

11 (4) If judicial review of an administrative, licensing, or
12 other proceeding is available, notwithstanding the contrary pro-
13 visions of Act No. 306 of the Public Acts of 1969 pertaining to
14 judicial review, the court originally taking jurisdiction shall
15 maintain jurisdiction for purposes of judicial review.

16 Sec. 4305. (1) If administrative, licensing, or other pro-
17 ceedings, and judicial review thereof are available by law, the
18 agency or the court may permit the attorney general or any other
19 person to intervene as a party on the filing of a pleading
20 asserting that the proceeding or action for judicial review
21 involves conduct that has, or is likely to have, the effect of
22 polluting, impairing, or destroying the air, water, or other nat-
23 ural resources or the public trust in these resources.

24 (2) In administrative, licensing, or other proceedings, and
25 in any judicial review of such a proceeding, the alleged pollu-
26 tion, impairment, or destruction of the air, water, or other
27 natural resources, or the public trust in these resources, shall

1 be determined, and conduct shall not be authorized or approved
2 that does, or is likely to have such an effect if there is a fea-
3 sible and prudent alternative consistent with the reasonable
4 requirements of the public health, safety, and welfare.

5 (3) The doctrines of collateral estoppel and res judicata
6 may be applied by the court to prevent multiplicity of suits.

7 Sec. 4306. This part is supplementary to existing adminis-
8 trative and regulatory procedures provided by law.

9 PART 45 ENVIRONMENTAL RESPONSE

10 Sec. 4501. The legislature hereby finds and declares:

11 (a) That there exist in this state certain facilities con-
12 taining hazardous substances that pose a danger to the public
13 health, safety, or welfare, or to the environment of this state.

14 (b) That there is a need to provide for a method of elimi-
15 nating the danger of environmental contamination caused by the
16 existence of hazardous substances at sites within the state.

17 (c) That it is the purpose of this part to provide for
18 appropriate response activity to eliminate the environmental con-
19 tamination caused by the presence of hazardous substances at
20 sites within the state.

21 (d) That there is a need for additional administrative and
22 judicial remedies to supplement existing statutory and common-law
23 remedies.

24 (e) That the responsibility for the cost of response activi-
25 ties pertaining to a release or threat of release and repairing
26 injury, destruction, or loss to natural resources caused by a
27 release or threat of release should not be placed upon the public

1 except when funds cannot be collected from, or a response
2 activity cannot be undertaken by, a person liable under this
3 part, in conjunction with an appropriate contribution, if appli-
4 cable, from a fund administered by the orphan share
5 administration.

6 (f) That to the extent possible, consistent with require-
7 ments under this part and rules promulgated under this part,
8 response activities shall be undertaken by persons liable under
9 this part.

10 (g) That this part is intended to provide remedies for
11 facilities posing any threat to the public health, safety, or
12 welfare, or to the environment, regardless of whether the release
13 or threat of release of a hazardous substance occurred before or
14 after October 13, 1982, the effective date of the former environ-
15 mental response act, Act No. 307 of the Public Acts of 1982, and
16 for this purpose this part shall be given retroactive
17 application. However, criminal and civil penalties provided in
18 the amendatory act that added this subdivision to former Act
19 No. 307 of the Public Acts of 1982 shall only apply to violations
20 of this part that occur after July 1, 1991.

21 (h) That money should be appropriated by the legislature for
22 response activities taking into consideration the order that
23 sites are on the list described in section 4505(1)(d) and appli-
24 cable provisions of the environmental protection bond implementa-
25 tion act, Act No. 328 of the Public Acts of 1988, being sections
26 299.671 to 299.685 of the Michigan Compiled Laws.

1 (i) That a site that is owned by the federal government, the
2 state, or a local unit of government, or a site where a release
3 or threat of release is caused by the federal government, the
4 state, or a local unit of government, should not be treated dif-
5 ferently in terms of the expenditure of money for response activ-
6 ities than any other site on the list described in section
7 4505(1)(d).

8 (j) That if a person that may be liable under section 4526
9 is the state or a local unit of government, this part should be
10 enforced by the attorney general and the department in the same
11 manner as it would be for any other person that may be liable
12 under section 4526.

13 (k) That prior to expending money to undertake remedial
14 action at a site, the department should assure a private or
15 public funding source, or a combination of funding sources, that
16 is sufficient to assure that the response activities at the site
17 proceed without interruptions caused by insufficient financial
18 resources until the site meets or exceeds the standards estab-
19 lished by the department for that site.

20 (l) That this part is not intended to impose penalties or
21 exemplary damages upon parties conducting response activities
22 pursuant to a decree or order to which the United States is a
23 party.

24 (m) That this part is intended to foster the redevelopment
25 and reuse of vacant manufacturing facilities and abandoned indus-
26 trial sites that have economic development potential, if that

1 redevelopment or reuse assures the protection of the public
2 health, safety, welfare, and the environment.

3 Sec. 4502. As used in this part:

4 (a) "Act of God" means an unanticipated grave natural
5 disaster or other natural phenomenon of an exceptional, inevita-
6 ble, and irresistible character, the effects of which could not
7 have been prevented or avoided by the exercise of due care or
8 foresight.

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

18 (c) "Attorney general" means the department of the attorney
19 general.

20 (d) "Commercial lending institution" means a state or
21 nationally chartered bank, a state or federally chartered savings
22 and loan association or savings bank, or a state or federally
23 chartered credit union, or other state or federally chartered
24 lending institution or a regulated affiliate or a regulated sub-
25 sidiary of any of these entities.

26 (e) "Department" means the director of the department of
27 natural resources or his or her designee.

1 (f) "Director" means the director of the department of
2 natural resources.

3 (g) "Directors" means the directors or their designees of
4 the departments of natural resources, public health, agriculture,
5 and state police.

6 (h) "Disposal" means the discharge, deposit, injection,
7 dumping, spilling, leaking, or placing of any hazardous substance
8 into or on any land or water so that the hazardous substance or
9 any constituent of the hazardous substance may enter the environ-
10 ment or be emitted into the air or discharged into any groundwa-
11 ter or surface water.

12 (i) "Enforcement costs" means court expenses, reasonable
13 attorney fees of the attorney general, and other reasonable
14 expenses of an executive department that are incurred in relation
15 to enforcement under this part or rules promulgated under this
16 part, or both.

17 (j) "Environment" or "natural resources" means any land,
18 surface water, groundwater, subsurface, strata, air, fish, wild-
19 life, or biota within the state.

20 (k) "Environmental contamination" means the release of a
21 hazardous substance, or the potential release of a discarded haz-
22 ardous substance, in a quantity, which is or may become injurious
23 to the environment, or to the public health, safety, or welfare.

24 (l) "Evaluation" means those activities including but not
25 limited to investigation, studies, sampling, analysis, develop-
26 ment of feasibility studies, and administrative efforts, that are

1 needed to determine the nature, extent, and impact of a release
2 or threat of release and necessary response activities.

3 (m) "Facility" means any area, place, or property where a
4 hazardous substance has been released, deposited, stored, dis-
5 posed of, or otherwise comes to be located.

6 (n) "Feasibility study" means a process for developing,
7 evaluating, and selecting appropriate response activities.

8 (o) "Fund" means the environmental response fund established
9 in section 4508.

10 (p) "Hazardous substance" means 1 or more of the following:

11 (i) A chemical or other material which is or may become
12 injurious to the public health, safety, or welfare or to the
13 environment.

14 (ii) "Hazardous substance" as defined in the comprehensive
15 environmental response, compensation, and liability act of 1980,
16 Public Law 96-510, 94 Stat. 2767.

17 (iii) "Hazardous waste" as defined in part 61.

18 (iv) "Petroleum" as defined in part 49.

19 (q) "Interim response activity" means the cleanup or removal
20 of a released hazardous substance or the taking of other actions,
21 prior to the implementation of a remedial action, as may be nec-
22 essary to prevent, minimize, or mitigate injury to the public
23 health, safety, or welfare, or to the environment. Interim
24 response activity also includes, but is not limited to, measures
25 to limit access, replacement of water supplies, and temporary
26 relocation of people as determined to be necessary by the
27 department. In addition, interim response activity means the

1 taking of other actions as may be necessary to prevent, minimize,
2 or mitigate a threatened release.

3 (r) "Local health department" means that term as defined in
4 section 1105 of the public health code, Act No. 368 of the Public
5 Acts of 1978, being section 333.1105 of the Michigan Compiled
6 Laws.

7 (s) "Local unit of government" means a county, city, town-
8 ship, or village, an agency of a local unit of government, an
9 authority or any other public body or entity created by or pursu-
10 ant to state law. Local unit of government does not include the
11 state or federal government or a state or federal agency.

12 (t) "Operator" means a person that is in control of or
13 responsible for the operation of a facility. Operator does not
14 include any of the following:

15 (i) A person that, without participating in the management
16 of the facility, holds indicia of ownership primarily to protect
17 the person's security interest in the facility, including, but
18 not limited to, a vendor's interest under a recorded land
19 contract. For the purposes of this part, a commercial lending
20 institution shall not be construed to be participating in the
21 management of a facility by extending credit, providing financial
22 services, providing financial advice, or supervising a plan to
23 resolve financial difficulties for an operator, or conducting or
24 causing to be conducted a prudent or legally required review or
25 investigation of environmental matters related to the facility or
26 the operator of the facility, if the actions of the commercial
27 lending institution do not suggest, condone, or encourage the

1 treatment or handling of a hazardous substance by the operator in
2 a manner that results in a release.

3 (ii) The state or a local unit of government that acquired
4 ownership or control of the facility involuntarily through bank-
5 ruptcy, tax delinquency, abandonment, or other circumstances in
6 which the government involuntarily acquires title or control by
7 virtue of its governmental function, a local unit of government
8 to which ownership or control of the facility is transferred by
9 the state, or the state or a local unit of government that
10 acquired ownership or control of the facility by seizure, receiv-
11 ership, or forfeiture pursuant to the operation of law or by
12 court order. In case of an acquisition described in this sub-
13 paragraph by the state or a local unit of government, operator
14 means a person that was in control of or responsible for opera-
15 tion of the facility immediately before the state or local unit
16 of government acquired ownership or control. The exclusion pro-
17 vided in this subparagraph does not apply to the state or a local
18 unit of government that caused or contributed to the release or
19 threat of a release from the facility.

20 (iii) The operator of an underground storage tank system, as
21 defined in part 49, from which there is a release or threat of
22 release if all of the following conditions are met:

23 (A) The operator reported the release or threat of release
24 to the department of state police, fire marshal division, within
25 24 hours after confirmation of the release or threat of release.

26 (B) The release or threat of release at the facility is
27 solely the result of a release or threat of release of a

1 regulated substance as defined in part 49 from an underground
2 storage tank system.

3 (C) The operator is in compliance with the requirements of
4 part 49, and any promulgated rules or any order, agreement, or
5 judgment issued or entered into pursuant to that part.

6 (iv) A state or local unit of government that holds or
7 acquires an easement interest in a facility, holds or acquires an
8 interest in a facility by dedication in a plat, or by dedication
9 pursuant to Act No. 283 of the Public Acts of 1909, being sec-
10 tions 220.1 to 239.6 of the Michigan Compiled Laws. The exclu-
11 sion provided in this subparagraph does not apply to the state or
12 a local unit of government that holds an easement or dedication
13 if the state or that local unit of government caused or contrib-
14 uted to a release or threat of release, or if equipment owned or
15 operated by the state or that local unit of government caused or
16 contributed to the release or threat of release.

17 (v) A person that holds an easement interest in a facility
18 for the purpose of conveying or providing goods or services,
19 including, but not limited to, utilities, sewers, roads, rail-
20 ways, and pipelines; or a person that acquires access through an
21 easement. The exclusion provided in this subparagraph does not
22 apply to a person that holds an easement if that person caused or
23 contributed to a release or threat of release, or if equipment
24 owned or operated by that person caused or contributed to the
25 release or threat of release.

26 (vi) A person that satisfies all of the following:

1 (A) The release was caused solely by a third party who is
2 not an employee or agent of the person, or whose action was not
3 associated with a contractual relationship with the person.

4 (B) The hazardous substance was not deposited, stored, or
5 disposed of on the property upon which the person operates.

6 (C) The person at the time of transfer of the right to oper-
7 ate on the property discloses any knowledge or information con-
8 cerning the general nature and extent of the release as required
9 in section 4516.

10 (u) "Owner" means a person that owns a facility. Owner does
11 not include any of the following:

12 (i) A person that, without participating in the management
13 of the facility, holds indicia of ownership primarily to protect
14 the person's security interest in the facility, including, but
15 not limited to, a vendor's interest under a recorded land
16 contract. For the purposes of this part, a commercial lending
17 institution shall not be construed to be participating in the
18 management of a facility by extending credit, providing financial
19 services, providing financial advice, or supervising a plan to
20 resolve financial difficulties for an owner, or conducting or
21 causing to be conducted a prudent or legally required review or
22 investigation of environmental matters related to the facility or
23 the owner of the facility, if the actions of the commercial lend-
24 ing institution do not suggest, condone, or encourage the treat-
25 ment or handling of a hazardous substance by the owner in a
26 manner that results in a release.

1 (ii) The state or a local unit of government that acquired
2 ownership or control of the facility involuntarily through
3 bankruptcy, tax delinquency, abandonment, or other circumstances
4 in which the government involuntarily acquires title or control
5 by virtue of its governmental function, a local unit of govern-
6 ment to which ownership or control of the facility is transferred
7 by the state, or the state or a local unit of government that
8 acquired ownership or control of the facility by seizure, receiv-
9 ership, or forfeiture pursuant to the operation of law or by
10 court order. In case of an acquisition described in this sub-
11 paragraph by the state or a local unit of government, owner means
12 any person who owned or controlled activities at the facility
13 immediately before the state or local unit of government acquired
14 ownership or control. The exclusion provided in this subpara-
15 graph does not apply to the state or a local unit of government
16 that caused or contributed to the release or threat of a release
17 from the facility.

18 (iii) A person that satisfies all of the following:

19 (A) The release was caused solely by a third party, who is
20 not an employee or agent of the person, or whose action was not
21 associated with a contractual relationship with the person.

22 (B) The hazardous substance was not deposited, stored, or
23 disposed of on that person's property.

24 (C) The person at the time of transfer of the property dis-
25 closes any knowledge or information concerning the general nature
26 and extent of the release as required in section 4516.

1 (iv) The owner of an underground storage tank system, as
2 defined in part 49, from which there is a release or threat of
3 release if all of the following conditions are met:

4 (A) The owner reported the release or threat of release to
5 the department of state police, fire marshal division, within 24
6 hours after confirmation of the release or threat of release.

7 (B) The release or threat of release at the facility is
8 solely the result of a release or threat of release of a regu-
9 lated substance as defined in part 49 from an underground storage
10 tank system.

11 (C) The owner is in compliance with the requirements of part
12 49, and any promulgated rules or any order, agreement, or judg-
13 ment issued or entered pursuant to that part.

14 (v) A state or local unit of government that holds or
15 acquires an easement interest in a facility, holds or acquires an
16 interest in a facility by dedication in a plat, or by dedication
17 pursuant to Act No. 283 of the Public Acts of 1909, being sec-
18 tions 220.1 to 239.6 of the Michigan Compiled Laws. The exclu-
19 sion provided in this subparagraph does not apply to the state or
20 a local unit of government that holds an easement or dedication
21 if that state or local unit of government caused or contributed
22 to a release or threat of release, or if equipment owned or oper-
23 ated by the state or that local unit of government caused or con-
24 tributed to the release or threat of release.

25 (vi) A person that holds an easement interest in a facility
26 for the purpose of conveying or providing goods or services,
27 including, but not limited to, utilities, sewers, roads,

1 railways, and pipelines; or a person that acquires access through
2 an easement. The exclusion provided in this subparagraph does
3 not apply to a person that holds an easement if that person
4 caused or contributed to a release or threat of release, or if
5 equipment owned or operated by that person caused or contributed
6 to the release or threat of release.

7 (vii) A person that holds only subsurface mineral rights to
8 the property and has not caused or contributed to a release on
9 the property.

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

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

13 (ii) A lawful and authorized discharge into a permitted
14 waste treatment facility.

15 (iii) A federally permitted release as defined in the com-
16 prehensive environmental response, compensation, and liability
17 act of 1980.

18 (w) "Release" includes, but is not limited to, any spilling,
19 leaking, pumping, pouring, emitting, emptying, discharging,
20 injecting, escaping, leaching, dumping, or disposing of a hazard-
21 ous substance into the environment, or the abandonment or dis-
22 carding of barrels, containers, and other closed receptacles con-
23 taining a hazardous substance. Release does not include any of
24 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, byproduct, or special nuclear
4 material from a nuclear incident, as those terms are defined in
5 the atomic energy act of 1954, chapter 1073, 68 Stat. 919, if
6 the release is subject to requirements with respect to financial
7 protection established by the nuclear regulatory commission under
8 section 170 of the atomic energy act of 1954, chapter 1073, 71
9 Stat. 576, 42 U.S.C. 2210, or, any release of source byproduct,
10 or special nuclear material from any processing site designated
11 under section 102(a)(1) of title I or 302(a) of title III of the
12 uranium mill tailings radiation control act of 1978, Public Law
13 95-604, 42 U.S.C. 7912 and 7942.

14 (iv) If applied according to label directions and according
15 to generally accepted agricultural and management practices, the
16 application of a fertilizer, soil conditioner, agronomically
17 applied manure, or a pesticide, or a combination of these
18 substances. As used in this subparagraph, fertilizer and soil
19 conditioner have the meaning given to these terms in the fertil-
20 izer act of 1975, Act No. 198 of the Public Acts of 1975, being
21 sections 286.751 to 286.767, and pesticide has the meaning given
22 to that term in part 35.

23 (x) "Remedial action" includes, but is not limited to,
24 cleanup, removal, containment, isolation, destruction, or treat-
25 ment of a hazardous substance released or threatened to be
26 released into the environment, monitoring, maintenance, or the
27 taking of other actions that may be necessary to prevent,

1 minimize, or mitigate injury to the public health, safety, or
2 welfare, or to the environment.

3 (y) "Remedial action plan" means a work plan for performing
4 remedial action under this part.

5 (z) "Response activity" means evaluation, interim response
6 activity, remedial action, or the taking of other actions neces-
7 sary to protect the public health, safety, or welfare, or the
8 environment, or the natural resources. Response activity also
9 includes health assessments or health effect studies carried out
10 under the supervision, or with the approval of, the department of
11 public health, and enforcement actions related to any response
12 activity.

13 (aa) "Response activity costs" or "costs of response
14 activity" means all costs incurred in taking or conducting a
15 response activity, including enforcement costs.

16 (bb) "Science advisory council" means the science advisory
17 council created in section 4523.

18 (cc) "Site" means the location of environmental
19 contamination.

20 (dd) "Threatened release" or "threat of release" means any
21 circumstance that may reasonably be anticipated to cause a
22 release.

23 Sec. 4503. The department shall seek federal assistance for
24 response activities required at facilities in this state.

25 Sec. 4504. The department shall coordinate all activities
26 required under this part and shall promulgate rules to provide
27 for the performance of response activities, to reflect and

1 effectuate the powers and duties of the department under this
2 part, and as otherwise necessary to carry out the requirements of
3 this part.

4 Sec. 4505. (1) The department shall do all of the
5 following:

6 (a) Upon discovery of a site, identify and evaluate the site
7 for the purpose of assigning to the site a priority score for
8 response activities. Upon assignment to the site of a priority
9 score for response activity, the site shall retain the same score
10 assignment unless a substantial body of data is provided to or
11 available to the department indicating to the department that a
12 substantial change in the score is warranted, and a person
13 requests rescoring for a site during the annual public comment
14 period following the publication of the list, or the department
15 determines that rescoring is appropriate.

16 (b) Develop 1 or more numerical risk assessment models for
17 assessing the relative present and potential hazards posed to the
18 public health, safety, or welfare, or to the environment by each
19 site identified pursuant to subdivision (a). The model, or
20 models if more than 1 is developed, shall provide a fair and
21 objective site specific numerical score designating the relative
22 risk posed to the public health, safety, or welfare, or to the
23 environment of each site.

24 (c) Include in rules promulgated under this part the numeri-
25 cal risk assessment model, or models if more than 1 is
26 developed. The numerical risk assessment model or models shall

1 be reviewed annually by the department to identify potential
2 improvements.

3 (d) Submit to the legislature in November of each year a
4 list strictly derived from the numerical risk assessment model or
5 models provided for in this section that does all of the
6 following:

7 (i) Includes all sites.

8 (ii) Categorizes sites according to the response activity at
9 the site at the time of listing and according to categories
10 established by rules.

11 (iii) Indicates whether the owner of a site is the federal
12 government, the state, or a local unit of government.

13 (e) Maintain and make available to the public upon request
14 records regarding sites where remedial actions have been com-
15 pleted, including sites where land use restrictions have been
16 imposed, if the records are not otherwise protected from disclo-
17 sure by law.

18 (f) Submit the list for public hearings geographically dis-
19 persed throughout the state. These hearings shall be completed
20 at least 30 days before the governor's annual budget recommenda-
21 tions to the legislature.

22 (g) Report at least annually to the legislature and the gov-
23 ernor those sites that have been removed from the list pursuant
24 to this section and rules promulgated under this part and the
25 source of the funds used to undertake the response activity at
26 each of the sites.

1 (h) Publish a notice annually in the Michigan register of
2 the availability of, and submit annually to the standing
3 committees of the senate and the house of representatives that
4 address legislation pertaining to the environment and the natural
5 resources of this state, a report describing the response activ-
6 ity that is undertaken at each site where response activity is or
7 has occurred during the reporting year and the nature of the con-
8 tamination that resulted in the necessity for that response
9 activity.

10 (2) Following July 1, 1991, if the department has informa-
11 tion identifying the owner of property that may be listed as a
12 site, the department shall make reasonable efforts to notify in
13 writing the owner of the property and the local health department
14 and the municipality in which the site is located prior to
15 including the site on the list. This subsection shall not be
16 construed to provide a defense to liability.

17 (3) A site shall be removed from the list when the
18 department's review of a site shows that the site does not meet
19 the criteria specified in rules promulgated under this part. A
20 site shall not be removed from this list until any necessary
21 response activity that meets the standards specified in rules
22 promulgated under this part is complete.

23 (4) A person may request that a site be removed from the
24 list by submitting a petition to the department. A petition
25 shall include all of the following information:

26 (a) A description and history of the site.

1 (b) A description of the nature and extent of the
2 environmental contamination that existed at the site at the time
3 the site was included on the list.

4 (c) A description of the response activity undertaken to
5 remedy the release or threat of a release, consistent with rules
6 promulgated under this part, or a description of the investiga-
7 tion conducted that supports the person's petition that the site
8 should be removed from the list without further response
9 activity.

10 (d) An analysis of the effectiveness of the response activ-
11 ity undertaken to remediate the release or threat of release.
12 The analysis shall include site specific analytical data that
13 documents the effectiveness of the response activity.

14 (e) Other site-specific information required by the
15 department.

16 (5) A person seeking the removal of a site from the list
17 shall prepare and submit to the department the documentation
18 required by subsection (4). If response activities have been
19 conducted by the department at the site, the department shall
20 prepare the documentation required by subsection (4).

21 (6) Within 30 days after receipt of the petition, the
22 department shall determine whether a petition submitted under
23 subsection (4) is administratively complete. Within 60 days
24 after a determination that a petition is administratively com-
25 plete, the petitioner shall be notified by the department of the
26 department's intent to remove the site from the list, or the
27 petitioner shall be notified that the petition for removal of the

1 site from the list does not meet the criteria for removal of the
2 site from the list as determined by rule. Removal of sites from
3 the list shall be accomplished as part of the process described
4 in rules promulgated under this part. However, if the department
5 concludes pursuant to subsection (3) that the circumstances war-
6 rant removal of the site from the list before or at the next reg-
7 ularly scheduled hearing to be held in accordance with rules
8 promulgated under this part, the department shall prepare a
9 notice of intent to remove the site from the list. A notice of
10 intent shall include information considered appropriate by the
11 department and shall be published in at least 1 newspaper of gen-
12 eral circulation that serves the area of the site and the notice
13 of intent shall be provided to the local health department and
14 the municipality in which the site is located. Public comment on
15 the notice of intent to remove the site from the site list shall
16 be accepted for a period of not less than 30 days from the date
17 of publication. The department may hold a public hearing on the
18 proposed action.

19 (7) The department shall make a final determination whether
20 to include the site on the next list. The department shall con-
21 sider any comments received in response to the notice described
22 in subsection (6).

23 (8) The department shall notify the person who requested
24 that the site be removed from the list and the local health
25 department, and the municipality in which the site is located of
26 the decision within 45 days of the end of the public comment

1 period provided for in the notice published pursuant to
2 subsection (6).

3 (9) As used in this section, "list" means the list described
4 in subsection (1)(d).

5 Sec. 4506. (1) The governor shall include in his or her
6 annual budget recommendations to the legislature a recommended
7 level of funding to provide for the activities necessary to
8 implement this part.

9 (2) The governor's recommendations under this section shall
10 be accompanied by a site specific description of the extent of
11 known or suspected environmental contamination, the recommended
12 response activities to be undertaken, and an estimate of cost of
13 those response activities.

14 Sec. 4507. A person who willfully tears down, removes, or
15 destroys any sign or notice warning of the presence of hazardous
16 substances or marking boundaries of a site subject to response
17 activity under this part is guilty of a misdemeanor, punishable
18 by imprisonment for not more than 90 days, or a fine of not more
19 than \$500.00, or both.

20 Sec. 4508. (1) An environmental response fund is estab-
21 lished in the department of the treasury. The environmental
22 response fund shall be administered by the governor or the
23 governor's designee.

24 (2) The fund shall receive as revenue any money from any
25 source, as appropriated by the legislature and the interest and
26 earnings of the fund shall be credited to the fund.

1 (3) In addition to the money received under subsection (2),
2 the fund shall receive as revenue money collected by the attorney
3 general in actions filed under this part, collected by the state
4 under this part, or collected by a person under section
5 4535(2).

6 (4) An unexpended balance within the fund at the close of
7 the fiscal year shall be carried forward to the following fiscal
8 year.

9 Sec. 4509. (1) A Michigan unclaimed bottle fund is estab-
10 lished as a separate revolving fund in the state treasury. The
11 money in the Michigan unclaimed bottle fund shall not revert to
12 the general fund. The Michigan unclaimed bottle fund shall be
13 administered by the department of treasury.

14 (2) The Michigan unclaimed bottle fund shall receive money
15 as disbursed by the department of treasury from the bottle
16 deposit fund under section 3c of the Initiated Law of 1976, being
17 section 445.573c of the Michigan Compiled Laws.

18 (3) The money deposited in the Michigan unclaimed bottle
19 fund shall be used in the manner and for the purposes described
20 in subsection (5).

21 (4) The Michigan unclaimed bottle fund shall consist of the
22 following:

23 (a) Money received from the bottle deposit fund under
24 section 3c of the Initiated Law of 1976.

25 (b) Any interest earned on the money described in subdivi-
26 sion (a) while that money is in the Michigan unclaimed bottle
27 fund.

1 (5) During the first 10 years that money is disbursed by the
2 bottle deposit fund under section 3c of the Initiated Law of
3 1976, the money received by the Michigan unclaimed bottle fund
4 and any interest earned on that money shall remain permanently in
5 the Michigan unclaimed bottle fund and shall not be disbursed
6 except that the legislature may appropriate from the unclaimed
7 bottle fund an amount sufficient to cover the reasonable adminis-
8 trative costs incurred by the long-term maintenance trust fund
9 board created in section 4510. After the expiration of those
10 first 10 years, all of the money thereafter deposited annually in
11 the Michigan unclaimed bottle fund, interest earned on the money
12 thereafter deposited annually in the Michigan unclaimed bottle
13 fund, and any interest earned on the money already in that fund
14 shall be disbursed annually by the department of treasury in the
15 following manner:

16 (a) One-third to the environmental response fund created in
17 section 4508.

18 (b) One-third to the long-term maintenance trust fund cre-
19 ated in section 4511.

20 (c) One-third to the clean Michigan fund created in section
21 9104.

22 Sec. 4510. (1) Not earlier than 8 years after July 27,
23 1989, the long-term maintenance trust fund board shall be created
24 within the department of natural resources and shall consist of 5
25 members, 1 of whom is the director of the department of natural
26 resources, or his or her designee, as an ex officio voting

1 member, and 4 of whom shall be appointed by the governor with the
2 advice and consent of the senate in the following manner:

3 (a) One member of the general public representing the inter-
4 ests of persons involved in advancing the cause of conservation
5 in all its phases including natural resources management, envi-
6 ronmental education, enhancement of fish and wildlife population,
7 and prevention of environmental degradation.

8 (b) One member of the general public representing the inter-
9 ests of environmentally concerned citizens and groups.

10 (c) Two members of the general public who are knowledgeable
11 in scientific and technical areas of study that are relevant to
12 the long-term monitoring and maintenance of sites.

13 (2) The term of each appointed member shall be 4 years,
14 except that of those members first appointed 1 shall be appointed
15 for a term of 4 years, 1 shall be appointed for a term of 3
16 years, 1 shall be appointed for a term of 2 years, and 1 shall be
17 appointed for a term of 1 year. Vacancies shall be filled for
18 the unexpired term in the same manner as the original
19 appointment.

20 (3) Members of the long-term maintenance trust fund board
21 shall receive per diem compensation and reimbursement for the
22 actual and necessary expenses incurred through the performance of
23 their duties as established annually by the legislature and shall
24 not receive compensation for those expenses from any other
25 source.

1 (4) The long-term maintenance trust fund board shall elect a
2 chairperson and other officers as are necessary for conducting
3 business.

4 (5) The long-term maintenance trust fund board shall promul-
5 gate rules setting forth criteria for projects designed to imple-
6 ment the purposes for which the long-term maintenance trust fund
7 was established.

8 (6) The long-term maintenance trust fund board shall meet
9 not less than twice per year and shall consider and approve or
10 disapprove recommendations by the department for projects
11 designed to implement the purposes for which the long-term main-
12 tenance trust fund was established.

13 (7) The business which the long-term maintenance trust fund
14 board may perform shall be conducted at a public meeting held in
15 compliance with the open meetings act, Act No. 267 of the Public
16 Acts of 1976, being sections 15.261 to 15.275 of the Michigan
17 Compiled Laws. Public notice of the time, date, and place of the
18 meeting shall be given in a manner required by Act No. 267 of the
19 Public Acts of 1976.

20 (8) The long-term maintenance trust fund board shall annu-
21 ally file a report with the governor and the legislature summa-
22 rizing the project proposals reviewed, the amount of expenditures
23 authorized, and the effectiveness of the expenditures in attain-
24 ing the goals for which the long-term maintenance trust fund is
25 established.

26 Sec. 4511. (1) A long-term maintenance trust fund is
27 established as a separate revolving fund in the state treasury.

1 The money in the long-term maintenance trust fund shall not
2 revert to the general fund. The long-term maintenance trust fund
3 shall be administered by the long-term maintenance trust fund
4 board.

5 (2) The long-term maintenance trust fund shall receive money
6 as disbursed from the Michigan unclaimed bottle fund created in
7 section 4509.

8 (3) The money deposited in the long-term maintenance trust
9 fund shall be used in a manner and for the purposes described in
10 rules promulgated by the department, for 1 or more of the
11 following:

12 (a) The operation, maintenance, and monitoring of sites
13 where the department determines such activities are necessary.

14 (b) The enforcement of this act or part 63, or both.

15 (c) Any project the long-term maintenance trust fund board
16 determines by rule as having for its purpose the prevention of
17 environmental contamination.

18 Sec. 4512. By December 27, 1989, the department of manage-
19 ment and budget shall enter into a contract for the preparation
20 of a study that analyzes the public and private costs associated
21 with various levels of cleanup standards for response activities
22 under this part. The study shall also include, but is not
23 limited to, an analysis of how quickly various levels of cleanup
24 have been and can be accomplished. The contract shall provide
25 for the study to be completed within 6 months. Prior to entering
26 into the contract, the department of management and budget shall
27 consult with the department and the chairpersons of the standing

1 committees of the senate and the house of representatives
2 responsible for issues pertaining to the natural resources and
3 the environment regarding the design and the scope of the study.
4 The study required under this section may be conducted in con-
5 junction with other related studies. Upon completion of the
6 study, the department of management and budget shall submit
7 copies of the study to the legislature.

8 Sec. 4513. (1) Money required to pay for response activi-
9 ties recommended under this part and to reimburse state depart-
10 ments and agencies for expenditures for those purposes shall be
11 appropriated from the fund and any other source the legislature
12 considers necessary to carry out the requirements of this part.

13 (2) Money from the fund shall be appropriated only for
14 response activities at facilities that have been subjected to the
15 risk assessment process described in section 4505.

16 (3) The fund may be used for match, operation, and mainte-
17 nance purposes as required under the comprehensive environmental
18 response, compensation, and liability act of 1980, Public Law
19 96-510, 94 Stat. 2767, and under subtitle I of the solid waste
20 disposal act, title II of Public Law 89-272, 42 U.S.C. 6991 to
21 6991i.

22 (4) The governor shall recommend an annual appropriation for
23 the fund in his or her annual budget recommendations to the
24 legislature.

25 Sec. 4514. (1) Except as provided in subsection (3), an
26 owner or operator of a facility that obtains information that
27 there may be a release at that facility shall immediately take

1 appropriate action, consistent with applicable laws and rules
2 promulgated by the department, to do all of the following:

3 (a) Confirm the existence of the release.

4 (b) Determine the nature and extent of the release.

5 (c) Report the release to the department within 24 hours
6 after obtaining knowledge of the release. The requirements of
7 this subdivision shall apply to reportable quantities of hazard-
8 ous substances established pursuant to 40 C.F.R. 302.4, unless
9 the department establishes through rules alternate or additional
10 reportable quantities as necessary to protect the public health,
11 safety, or welfare, or the environment.

12 (d) Immediately stop or prevent the release at the source.

13 (e) Immediately identify and eliminate any threat of fire or
14 explosion or any direct contact hazards.

15 (f) Immediately initiate removal of a hazardous substance
16 that is in a liquid phase, that is not dissolved in water, and
17 that has been released.

18 (2) Except as provided in subsection (3), a person that
19 holds an easement interest in a portion of a property that has
20 knowledge that there may be a release within that easement shall
21 report the release to the department within 24 hours after
22 obtaining knowledge of the release. Unless the department estab-
23 lishes through rules alternate or additional reportable quanti-
24 ties as necessary to protect the public health, safety, or wel-
25 fare, or the environment, this subsection shall apply to report-
26 able quantities of hazardous substances established pursuant to
27 40 C.F.R. 302.4.

1 (3) The requirements of subsections (1) and (2) do not apply
2 to a permitted release or a release in compliance with applicable
3 federal, state, and local air pollution control laws.

4 (4) An owner or operator of a facility or a person notified
5 by the department as potentially liable pursuant to section
6 4526, upon written request by the director, shall take the fol-
7 lowing additional actions:

8 (a) Provide a plan for and undertake interim response
9 activities.

10 (b) Provide a plan for and undertake evaluation activities.

11 (c) Take any other response activity determined by the
12 department to be technically sound and necessary to protect the
13 public health, safety, welfare, or the environment.

14 (d) Submit to the department for approval a remedial action
15 plan that, when implemented, will achieve the cleanup levels
16 specified in rules promulgated under this part.

17 (e) Implement an approved remedial action plan in accordance
18 with a schedule approved by the department pursuant to this
19 part.

20 (5) Upon a determination by the department that a person has
21 completed all response activity at a facility pursuant to an
22 approved remedial action plan prepared and implemented in compli-
23 ance with rules promulgated under this part, the department, upon
24 request of a person, shall execute and present a document stating
25 that all response activities required in the approved remedial
26 action plan have been completed.

1 (6) A person in charge of a facility from which a hazardous
2 substance is released that is determined to be reportable under
3 subsection (1)(c), other than a permitted release, that fails to
4 notify the department within 24 hours after obtaining knowledge
5 of the release or that submits in such notification any informa-
6 tion that the person knows to be false or misleading is subject
7 to a civil fine of not more than \$25,000.00 for each day in which
8 the violation occurs or the failure to comply continues. A fine
9 imposed under this subsection shall be based upon the seriousness
10 of the violation and any good faith efforts by the violator to
11 comply with this subsection.

12 (7) If a state or local unit of government obtains informa-
13 tion that there is a release or threat of release on public prop-
14 erty, and is requested by the department to undertake response
15 activity, or takes emergency action that has been approved by the
16 department, and the state or local unit of government incurs
17 expenses in taking the actions, the expenses of the state or
18 local unit of government shall be reimbursed from the Michigan
19 environmental assurance fund if enabling legislation creating the
20 fund is enacted into law and if each of the following is
21 established:

22 (a) The release or threat of release was not discovered or
23 should not have been discovered pursuant to section
24 4527(2)(b)(ii).

25 (b) The state or local unit of government did not cause or
26 contribute to the release or threat of release.

1 (c) The state or local unit of government is not liable
2 under section 4526 for the release or threat of release.

3 (8) This section does not do either of the following:

4 (a) Limit the authority of the department to take or conduct
5 response activities pursuant to this part.

6 (b) Limit the liability of a person that may be liable under
7 section 4526.

8 Sec. 4515. (1) The department, upon confirmation of a
9 release or threat of release of a substance that is regulated by
10 the department of agriculture, shall notify the department of
11 agriculture. The department shall consult with the department of
12 agriculture in the development of response activities if a
13 release or threat of a release of a substance regulated by the
14 department of agriculture occurs. The department of agriculture
15 shall provide to the department information necessary to identify
16 substances regulated by the department of agriculture. This
17 information shall include but is not limited to the list of state
18 registered pesticides.

19 (2) As used in this section, "substance regulated by the
20 department of agriculture" means a fertilizer or soil conditioner
21 as defined in the fertilizer act of 1975, Act No. 198 of the
22 Public Acts of 1975, being sections 286.751 to 286.767 of the
23 Michigan Compiled Laws, or a pesticide as defined in part 35.

24 Sec. 4516. (1) A person that has knowledge or information
25 or is on notice through a recorded instrument that a parcel of
26 his or her real property is a facility at which there has been a
27 release, in a quantity required to be reported pursuant to

1 section 4514(1)(c), shall not transfer an interest in that real
2 property unless he or she provides written notice to the pur-
3 chaser or other person to whom the property is transferred that
4 the real property is such a facility and discloses the general
5 nature and extent of the release. The written notice provided by
6 the transferor shall be a separate instrument and, if the instru-
7 ment conveying the interest in real property is recorded, the
8 written notice shall be recorded with the register of deeds in
9 the same county.

10 (2) The owner of real property for which a notice required
11 in subsection (1) has been recorded may, upon completion of all
12 response activities for the facility as approved by the depart-
13 ment, record with the register of deeds for the appropriate
14 county a certification that all response activity required in an
15 approved remedial action plan has been completed.

16 Sec. 4517. (1) To determine the need for response activity,
17 or selecting or taking a response activity or otherwise enforcing
18 this part or a rule promulgated under this part, the directors or
19 their authorized representatives may upon reasonable notice
20 require a person to furnish any information that the person may
21 have relating to any of the following:

22 (a) The identification, nature, and quantity of materials
23 that have been or are generated, treated, stored, handled, or
24 disposed of at a facility or transported to a facility.

25 (b) The nature or extent of a release or threatened release
26 at or from a facility.

1 (2) Upon reasonable notice, a person required to furnish
2 information pursuant to subsection (1) shall either:

3 (a) Grant the directors or their authorized representatives
4 access at all reasonable times to any place, property, or loca-
5 tion to inspect and copy the related information.

6 (b) Copy and furnish to the directors or their authorized
7 representatives the related information.

8 (3) If there is a reasonable basis to believe that there may
9 be a release or threat of release, the directors or their autho-
10 rized representatives have the right to enter at all reasonable
11 times any public or private property for any of the following
12 purposes:

13 (a) Identifying a facility.

14 (b) Investigating the existence, origin, nature, or extent
15 of a release or threatened release.

16 (c) Inspecting, testing, taking photographs or videotapes,
17 or sampling of any of the following: soils, air, surface water,
18 groundwater, suspected hazardous substances, or any containers or
19 labels of suspected hazardous substances.

20 (d) Determining the need for or selecting any response
21 activity.

22 (e) Taking or monitoring implementation of any response
23 activity.

24 (4) A person who enters public or private property pursuant
25 to subsection (3) shall present credentials; make a reasonable
26 effort to contact the person in charge of the facility or that
27 person's designee; describe the nature of the activities

1 authorized under subsection (3) to be undertaken; and inform the
2 person that is in charge of the facility that he or she is enti-
3 tled to participate in the collection of split samples, and is
4 entitled to a copy of the results of any analysis of samples and
5 a copy of any photograph or videotape taken. The person in
6 charge or his or her agent may accompany the directors or their
7 authorized representatives during the activities authorized under
8 subsection (3) that take place and may participate in the collec-
9 tion of any split samples on the property. The absence or
10 unavailability of the person in charge or that person's agent
11 shall not delay or limit the authority of the directors or their
12 authorized representatives to enter the property or proceed with
13 the activities authorized under subsection (3).

14 (5) If the directors or their authorized representatives
15 obtain any samples, before leaving the property they shall give
16 to the person in charge of the property from which the samples
17 were obtained a receipt describing the sample. A copy of the
18 results of any analysis of the samples shall upon request be fur-
19 nished promptly to the person in charge. A copy of any photo-
20 graph or videotape taken pursuant to subsection (3)(c) shall upon
21 request be furnished promptly to the person in charge.

22 (6) All inspections and investigations undertaken by the
23 directors or their authorized representatives under this section
24 shall be completed with reasonable promptness.

25 (7) If refused entry or information under subsections (1) to
26 (4), for the purposes of enforcing the information gathering and

1 entry authority provided in this section, the attorney general,
2 on behalf of the state, may do either of the following:

3 (a) Petition the court of appropriate jurisdiction for a
4 warrant authorizing access to property or information pursuant to
5 this section.

6 (b) Commence a civil action to compel compliance with a
7 request for information or entry pursuant to this section, to
8 authorize information gathering and entry provided for in this
9 section, and to enjoin interference with the exercise of the
10 authority provided in this section.

11 (8) In a civil action brought pursuant to subsection (7), if
12 there is a reasonable basis to believe there may be a release or
13 a threatened release, the court shall in the case of interference
14 or noncompliance with information requests pursuant to
15 subsection (1), or with entry or inspection requests pursuant to
16 subsection (3), enjoin interference with and direct compliance
17 with the requests unless the defendant establishes that, under
18 the circumstances of the case, the request is arbitrary and
19 capricious, an abuse of discretion, or otherwise not in accord-
20 ance with law.

21 (9) In a civil action brought pursuant to subsection (7), if
22 there is a reasonable basis to believe there may be a release or
23 a threatened release, the court may assess a civil fine not to
24 exceed \$25,000.00 for each day of noncompliance against a person
25 who unreasonably fails to comply with the provisions of subsec-
26 tion (1), (2), or (3).

1 - (10) Information obtained by the directors or their
2 authorized representatives as authorized under subsection (1) or
3 (2) shall be available to the public to the extent provided by
4 the freedom of information act, Act No. 442 of the Public Acts of
5 1976, being sections 15.231 to 15.246 of the Michigan Compiled
6 Laws. A person that provides information pursuant to
7 subsection (1) or (2), or the person in charge of a facility at
8 which photographs or videotapes are taken pursuant to
9 subsection (3), may designate the information that the person
10 believes to be entitled to protection as if the information was
11 exempt from disclosure as being either trade secrets or informa-
12 tion of a personal nature under section 13(1)(a) or (g) of the
13 freedom of information act, Act No. 442 of the Public Acts of
14 1976, being section 15.243 of the Michigan Compiled Laws, and
15 submit that specifically designated information separately from
16 other information required to be provided under this section.

17 (11) Notwithstanding subsection (10), the following informa-
18 tion obtained by the directors or their authorized representa-
19 tives as required by this section shall be available to the
20 public:

21 (a) The trade name, common name, or generic class or cate-
22 gory of the hazardous substance.

23 (b) The physical properties of a hazardous substance,
24 including its boiling point, melting point, flash point, specific
25 gravity, vapor density, solubility in water, and vapor pressure
26 at 20 degrees Celsius.

1 (c) The hazards to the public health, safety, or welfare, or
2 the environment posed by a hazardous substance, including
3 physical hazards, such as explosion, and potential acute and
4 chronic health hazards.

5 (d) The potential routes of human exposure to the hazardous
6 substance at the facility being investigated, entered, or
7 inspected under this section.

8 (e) The location of disposal of any waste stream released or
9 threatened to be released from the facility.

10 (f) Monitoring data or analysis of monitoring data pertain-
11 ing to disposal activities related to the facility.

12 (g) Hydrogeologic data.

13 (h) Groundwater monitoring data.

14 (12) To collect information for the purpose of identifying
15 persons that may be liable under section 4526 or to otherwise
16 enforce this part or a rule promulgated under this part, the
17 attorney general may by administrative subpoena require the
18 attendance and testimony of witnesses and production of papers,
19 reports, documents, answers to questions, and other information
20 the attorney general considers necessary. Witnesses shall be
21 paid the same fees and mileage that are paid witnesses in the
22 courts of this state. If a person fails or refuses to obey the
23 administrative subpoena, the circuit court for the county of
24 Ingham or for the county in which that person resides has juris-
25 diction to order that person to comply with the subpoena. A
26 failure to obey the order of the court is punishable by the court
27 as contempt.

1 (13) As used in this section, "information" includes, but is
2 not limited to, documents, materials, records, photographs, and
3 videotapes.

4 Sec. 4518. (1) The department may take response activity or
5 approve of response activity proposed by a person that is consis-
6 tent with rules promulgated under this part relating to the
7 selection and implementation of response activity that the
8 department concludes is necessary and appropriate to protect the
9 public health, safety, welfare, or the environment.

10 (2) Remedial action undertaken under subsection (1) at a
11 minimum shall accomplish all of the following:

12 (a) Assure the protection of the public health, safety, wel-
13 fare, or the environment.

14 (b) Attain a degree of cleanup and control of hazardous sub-
15 stances that complies with all applicable or relevant and appro-
16 priate requirements, rules, criteria, limitations, and standards
17 of state and federal environmental law.

18 (c) Be consistent with any cleanup standards incorporated in
19 any rules promulgated under this part.

20 (3) The cost effectiveness of alternative means of complying
21 with this section shall be considered by the department only in
22 selecting among alternatives that meet all of the criteria of
23 subsection (2).

24 (4) Remedial actions that permanently and significantly
25 reduce the volume, toxicity, or mobility of the hazardous sub-
26 stances are to be preferred.

1 (5) The department shall encourage the use of innovative
2 cleanup technologies. Before July 1, 1995, the department shall
3 undertake 3 pilot projects to demonstrate innovative cleanup
4 technologies at facilities where money from the fund is used.

5 (6) At a facility where state funds will be spent to plan or
6 implement a remedial action plan or where the director determines
7 there is a significant public interest, within 30 days after the
8 completion of a remedial investigation for the facility, the
9 department shall provide the county and the municipality in which
10 the facility is located a notice of the completion of the reme-
11 dial investigation, a summary of the remedial investigation, and
12 notice of an opportunity for the people in the local unit of gov-
13 ernment to meet with the department regarding the remedial inves-
14 tigation and any proposed feasibility study for the facility.
15 Upon a request for a public meeting by the governing body of the
16 local unit of government or by 25 citizens of the local unit of
17 government, the department shall, within 30 days of the request,
18 meet with persons in the local unit of government. The person or
19 persons requesting the public meeting shall publicize and provide
20 accommodations for the meeting. The meeting shall be held in the
21 local unit of government in which the facility is located. The
22 department shall provide copies of the notices and summary
23 required in this subsection to the governing body of the local
24 unit of government, to the known persons that may-be liable under
25 section 4526, and to the main public library of the local unit of
26 government in which the facility is located. The department
27 shall send representatives to the meeting who are familiar with

1 the facility and who are involved with determining the
2 appropriate remedial actions to be taken at the facility.
3 Persons that may be responsible under section 4526 for the facil-
4 ity may send representatives to the meeting.

5 (7) Before approval of a proposed remedial action plan at a
6 facility included on the list pursuant to section 4505 that is
7 not an interim response activity, if money from the fund is to be
8 used or as specified in rules promulgated under this part, the
9 department shall do all of the following:

10 (a) Publish a notice and brief summary of the proposed reme-
11 dial action plan.

12 (b) Provide for public review and comment pertinent to docu-
13 ments relating to the proposed remedial action plan, including,
14 if applicable, the feasibility study that outlines alternative
15 remedial action measures considered.

16 (c) Provide an opportunity for a public meeting at or near
17 the facility when any of the following occur:

18 (i) The department determines that there is a significant
19 public interest or that for any other reason a public meeting is
20 appropriate.

21 (ii) A municipality in which the facility is located, by a
22 majority vote of its governing body, requests a public meeting.

23 (iii) A local health department with jurisdiction in the
24 area in which the facility is located requests a public meeting.

25 (d) Provide a document that summarizes the major issues
26 raised by the public and how they are to be addressed by the
27 final approved remedial action plan.

1 (8) For purposes of this section, publication includes, at a
2 minimum, publication in a major local newspaper of general circu-
3 lation in this state. In addition, the administrative record
4 shall be made available by the department for inspection by mem-
5 bers of the public at or near the facility and in Lansing.

6 (9) The department shall prepare a summary document that
7 explains the reasons for the selection or approval of a remedial
8 action plan. In addition, the department shall compile an admin-
9 istrative record of the decision process that results in the
10 selection of a remedial action plan. The administrative record
11 shall contain all of the following:

12 (a) Remedial investigation data regarding the facility.

13 (b) If applicable, a feasibility study and potential reme-
14 dial actions.

15 (c) If applicable, a summary document that explains the rea-
16 sons why a remedial investigation or feasibility study was not
17 conducted.

18 (d) Applicable comments and information received from the
19 public, if any.

20 (e) If applicable, a document that summarizes the signifi-
21 cant concerns raised by the members of the public and how they
22 are to be addressed.

23 (f) Other information appropriate to the facility.

24 (10) If comments or information are submitted for inclusion
25 in the administrative record that are not included in the admin-
26 istrative record, a brief explanation of why the information was

1 not considered relevant shall be sent to the party by the
2 department and included in the record.

3 Sec. 4519. (1) In accordance with this section, if the
4 department determines that there may be an imminent and substan-
5 tial endangerment to the public health, safety, welfare, or the
6 environment, because of a release or threatened release, the
7 department may require persons that may be liable under section
8 4526 to take necessary action to abate the danger or threat.

9 (2) The department may issue an administrative order to a
10 person identified by the department as a person that may be
11 liable under section 4526 requiring that person to perform
12 response activity relating to a facility for which that person
13 may be liable, or to take any other action required by this
14 part. An order issued under this section shall state with rea-
15 sonable specificity the basis for issuance of the order and spec-
16 ify a reasonable time for compliance.

17 (3) Within 30 days after issuance of an administrative order
18 under this section, a person to whom the order was issued shall
19 indicate in writing whether the person intends to comply with the
20 order.

21 (4) A person that, without sufficient cause, violates or
22 fails to properly comply with an administrative order issued
23 under this section is liable for either or both of the
24 following:

25 (a) A civil fine of not more than \$25,000.00 for each day in
26 which the violation occurs or the failure to comply continues. A
27 fine imposed under this subsection shall be based upon the

1 seriousness of the violation and any good faith efforts by the
2 violator to comply with the administrative order.

3 (b) For exemplary damages in an amount at least equal to the
4 amount of any costs of response activity incurred by the state as
5 a result of a failure to comply with an administrative order but
6 not more than 3 times the amount of these costs.

7 (5) A person to whom an administrative order was issued
8 under this section and who complied with the terms of the order
9 who believes that the order was arbitrary and capricious or
10 unlawful may petition the department, within 60 days after com-
11 pletion of the required action, for reimbursement from the fund
12 for the reasonable costs of the action plus interest at the rate
13 described in section 4526(4) and other necessary costs incurred
14 in seeking reimbursement under this subsection. If the depart-
15 ment refuses to grant all or part of the petition, the petitioner
16 may, within 30 days of receipt of the refusal, file an action
17 against the department in the court of claims seeking this
18 relief. A failure by the department either to grant or deny all
19 or any part of a petition within 120 days of receipt constitutes
20 a denial of that part of the petition which is reviewable as
21 final agency action in the court of claims. To obtain reimburse-
22 ment, the petitioner shall establish by a preponderance of the
23 evidence that the petitioner is not liable under section 4526 or
24 that the action ordered was arbitrary and capricious or unlawful,
25 and in either instance that costs for which the petitioner seeks
26 reimbursement are reasonable in light of the action required by
27 and undertaken pursuant to the relevant order.

1 Sec. 4520. (1) The department shall develop a proposed
2 schedule for submittal of work plans for undertaking necessary
3 response activity for sites identified on a list prepared pursu-
4 ant to section 4505. Each work plan submitted shall include a
5 schedule for submittal of a proposed remedial action plan for the
6 site. The proposed schedule shall be consistent with any sched-
7 ule required under part 49. The proposed schedule shall be
8 reviewed by the commission, and after a public hearing regarding
9 the proposed schedule, the commission shall establish a
10 schedule. The department shall give written notice of the sched-
11 ule to all identified persons that may be liable under section
12 4526 and shall publish the schedule in the Michigan register
13 listing each facility by township and range coordinates, address,
14 and, if available, common identity. The department may grant an
15 extension to a requirement in the schedule only after holding a
16 public hearing in the county in which the facility subject to the
17 schedule is located.

18 (2) The persons that may be liable under section 4526 for a
19 facility may submit a proposed remedial action plan to the
20 department at any time in advance of the date provided in the
21 schedule under subsection (1).

22 (3) A proposed remedial action plan submitted to the depart-
23 ment under this part shall include a schedule for implementation
24 of response activity at the facility. Within 6 months after
25 receiving a proposed remedial action plan under this part, the
26 department shall review the plan and shall either approve the
27 plan or submit to the persons that may be liable under section

1 4526 changes in the proposed remedial action plan that would
2 result in approval of the plan. If the department submits
3 changes to the proposed remedial action plan, within 60 days
4 after the persons that may be liable under section 4526 receive
5 the department's changes, the persons that may be liable under
6 section 4526 may incorporate these changes into their proposed
7 remedial action plan and resubmit the proposed remedial action
8 plan to the department. Upon receipt of a proposed remedial
9 action plan that meets the requirements of the department, the
10 department shall approve the remedial action plan.

11 (4) If the department approves a remedial action plan under
12 subsection (3), the persons that may be liable under section
13 4526 shall implement the approved remedial action plan.

14 (5) If the participating persons that may be liable under
15 section 4526 reject the department's changes to the proposed
16 remedial action plan under subsection (3), the persons that may
17 be liable under section 4526 shall notify the department within
18 60 days after receiving the department's changes. Within 60 days
19 after the persons that may be liable under section 4526 reject
20 the department's changes, the department and the persons that may
21 be liable under section 4526 shall attempt to resolve their dif-
22 ferences, or identify items of difference between them for sub-
23 mittal to the science advisory council pursuant to section
24 4522. If the department and the persons that may be liable under
25 section 4526 are unable to jointly agree to the items of differ-
26 ence, the department shall notify the office of environmental

1 cleanup facilitation and the list of items of difference shall be
2 prepared as provided in section 4521(2).

3 (6) The department shall publish a notice in the Michigan
4 register each quarter identifying those sites not in compliance
5 with the schedule for submittal of response activity work plans
6 and those sites in which the department has not acted on a pro-
7 posed remedial action plan, as provided in this section.

8 (7) This section does not preclude the department from
9 taking action as provided in sections 4518 and 4519.

10 (8) This section is repealed effective July 1, 1996.

11 Sec. 4521. (1) The office of environmental cleanup facili-
12 tation is created within the department of management and
13 budget. The office of environmental cleanup facilitation shall
14 contract with individuals who are impartial, qualified facilita-
15 tors or contract with an organization that can provide impartial,
16 qualified facilitators, who are capable of assisting in the reso-
17 lution of disputes over the development of remedial action
18 plans.

19 (2) Within 14 days after receiving notification of submittal
20 to facilitation from the department under section 4520, the
21 office of environmental cleanup facilitation shall randomly
22 assign a facilitator to prepare a detailed list of items of dif-
23 ference between the department and the persons that may be liable
24 under section 4526. The facilitator assigned to the dispute
25 shall conduct discussions to identify those items of difference
26 and, within 30 days after being assigned, shall prepare the items

1 of difference and shall forward this list to the science advisory
2 council.

3 (3) Unless otherwise agreed by the department and the per-
4 sons that may be liable under section 4526 and except as pro-
5 vided in section 4522(3), the department and the persons that
6 may be liable under section 4526 shall each pay their costs
7 associated with facilitation under this section and section 4522
8 and they shall share equally the costs of the facilitator.

9 (4) This section is repealed effective July 1, 1996.

10 Sec. 4522. (1) Upon receipt of the items of difference pur-
11 suant to section 4520 or 4521, the science advisory council
12 shall appoint 3 of its members to provide recommendations for
13 resolving the items of difference. Within 60 days of its receipt
14 of the items of difference, for each item of difference, the
15 department and the persons that may be liable under section 4526
16 may submit a written statement not exceeding 20 pages in support
17 of its position. An interested member of the general public may
18 also submit a written statement, not exceeding 20 pages, in sup-
19 port of a position on any item of difference. The science
20 advisory council shall schedule a meeting to deliberate and pre-
21 pare recommendations on resolving the items of difference. A
22 meeting of the science advisory council shall be held pursuant to
23 the open meetings act, Act No. 267 of the Public Acts of 1976,
24 being sections 15.261 to 15.275 of the Michigan Compiled Laws.
25 The science advisory council shall, within 90 days of receiving
26 the written statements allowed to be submitted in this
27 subsection, forward its recommendations on the items of

1 difference to the department, the persons that may be liable
2 under section 4526, and the facilitator. The recommendations of
3 the science advisory council are part of the administrative
4 record.

5 (2) Within 30 days after receipt of the recommendations of
6 the science advisory council pursuant to subsection (1), the
7 facilitator shall conduct additional discussions with the depart-
8 ment and the persons that may be liable under section 4526 and
9 shall schedule a facilitation conference. Through these discus-
10 sions, the facilitator shall attempt to facilitate an agreement
11 between the department and the persons that may be liable under
12 section 4526 regarding the contents of a remedial action plan.
13 If the department and the persons that may be liable under
14 section 4526 are unable to agree to a remedial action plan at
15 the facilitation conference, the department shall approve a reme-
16 dial action plan that includes the recommendations of the science
17 advisory council, unless the department prepares and approves an
18 alternative remedial action plan. The department shall approve a
19 remedial action plan pursuant to this subsection within 90 days
20 after the department receives the recommendations from the
21 science advisory council. If the department does not approve a
22 remedial action plan during this time period, the persons that
23 may be liable under section 4526 may implement a remedial action
24 plan that includes all of the recommendations of the science
25 advisory council and is otherwise in compliance with this part
26 and the rules promulgated under this part. This remedial action
27 plan shall be considered an approved remedial action plan.

1 (3) A person that participates in the allocation process
2 under section 4525 does not have standing in a civil action to
3 challenge the recommendations of the science advisory council,
4 pursuant to subsection (1), which are included in an approved
5 remedial action plan. Additionally, if a court later upholds the
6 contents of the approved remedial action plan, the court shall
7 assess against the persons that may be liable under section 4526
8 for the facility the full costs of facilitation under this sec-
9 tion and section 4521 and enforcement costs. If the department
10 approves a remedial action plan that does not contain the recom-
11 mendations endorsed by a majority of the science advisory council
12 and if a court later does not uphold the contents of that reme-
13 dial action plan, the court shall assess against the department
14 the full costs of facilitation under this section and section
15 4521, court costs, and the reasonable attorney fees for the per-
16 sons that may be liable under section 4526. Additionally, if
17 the action is for cost recovery of response activities at a
18 facility in which remedial action has been completed, the court
19 shall only assess against the persons that may be liable under
20 section 4526 the cost of remedial action that the court deter-
21 mines should have been undertaken.

22 (4) In any court proceeding pursuant to this section, there
23 is a rebuttable presumption that the recommendations of the
24 science advisory council on the items of difference are supported
25 by a preponderance of scientific evidence.

26 (5) This section does not preclude the department from
27 taking action as provided in sections 4518 and 4519.

(6) This section is repealed effective July 1, 1996.

Sec. 4523. (1) The science advisory council is created as an independent, autonomous entity within the department of management and budget. The council shall consist of 7 individuals appointed by the governor, with the advice and consent of the senate, who have expertise in 1 or more of the following areas:

(a) Toxicology.

(b) Environmental engineering.

(c) Biology.

(d) Environmental chemistry.

(e) Hydrogeology.

(f) Soil science.

(g) Statistics.

(2) A member of the science advisory council shall serve for a term of 3 years, or until a successor is appointed by the governor, whichever is later, except of the members first appointed, 3 shall serve for 3 years, 2 shall serve for 2 years, and 2 shall serve for 1 year.

(3) The governor may remove a member of the science advisory council for incompetency, dereliction of duty, malfeasance in office, or any other good cause.

(4) For a period of 6 months after an individual ceases to serve on the science advisory council, that individual shall not be employed by the department, a person that may be liable under section 4526, or a consulting firm associated with the department or a person that may be liable under section 4526.

1 (5) Three members of the science advisory council on a
2 rotating basis shall make recommendations on resolving the items
3 of difference between the department and the persons that may be
4 liable under section 4526 for a facility with regard to the con-
5 tents of a remedial action plan pursuant to this part. The
6 science advisory council need not recommend a position advocated
7 by either the department or the persons that may be liable under
8 section 4526, but may recommend an alternative that is supported
9 by scientific evidence and is consistent with this part and the
10 rules promulgated under this part.

11 (6) The science advisory council shall make recommendations
12 only on the scientific and technical issues in dispute consistent
13 with the rules promulgated under this part, including, but not
14 limited to:

- 15 (a) Risk assessment assumptions and calculations.
- 16 (b) Data collection and interpretation.
- 17 (c) Technological effectiveness of remedial action
18 alternatives.
- 19 (d) Chemical, biological, and physical properties.
- 20 (e) Impacts on various media.

21 (7) The science advisory council shall not make recommenda-
22 tions on issues that are not primarily scientific or technical in
23 nature, including, but not limited to, any of the following:

- 24 (a) Cost effectiveness of remedial action alternatives.
- 25 (b) Current and reasonably foreseeable uses of natural
26 resources.

1 (c) Reasonably foreseeable uses of the facility.

2 (8) The members of the science advisory council who make
3 recommendations regarding the contents of a remedial action plan
4 for a facility shall not have any present or past personal, con-
5 tractual, financial, business, or employment interest in matters
6 related to the persons that have disputes before the science
7 advisory council.

8 (9) Upon request of the science advisory council, the
9 department shall provide the science advisory council with all
10 information the department has in its possession related to a
11 facility.

12 (10) This section is repealed effective July 1, 1996.

13 Sec. 4524. By July 1, 1994, the department shall report to
14 the legislature on all of the following with regard to the dis-
15 pute resolution process under sections 4520 to 4523:

16 (a) Whether the dispute resolution process is effectively
17 resolving disputes.

18 (b) The number of disputes addressed by the dispute resolu-
19 tion process.

20 (c) The results of disputes subject to the dispute resolu-
21 tion process.

22 (d) Recommendations regarding legislative action to improve
23 the dispute resolution process.

24 (e) The cost of the resolution of disputes through the use
25 of the dispute resolution process.

26 Sec. 4525. (1) As used in this section:

1 (a) "Allocation process" means a voluntary system for
2 determining the percentage share of response costs pursuant to
3 this section of each person that may be liable under section
4 4526 and the orphan share, if any.

5 (b) "Allocation review panel" or "panel" means the alloca-
6 tion review panel appointed by the orphan share administration.

7 (c) "Orphan share" means the percentage share of response
8 costs for a facility that the orphan share administration agrees
9 or the allocation review panel determines is not reasonably allo-
10 cable to any person that may be liable under section 4526 using
11 the criteria in subsection (10).

12 (d) "Orphan share administration" means the orphan share
13 administration created in subsection (21).

14 (e) "Response costs" means all costs incurred in taking or
15 conducting a response activity, enforcement costs, and all costs
16 incurred by the orphan share administration for the services of
17 the allocation review panel.

18 (2) This section only applies to a facility where 2 or more
19 persons that may be liable under section 4526 are identified by
20 the department. However, if only 1 person that may be liable
21 under section 4526 is identified for a facility by the depart-
22 ment, that person may submit a written request within 14 days
23 after the department approves a remedial action plan, or a reme-
24 dial action plan is considered approved under section 4522 to
25 the orphan share administration to commence the allocation
26 process. A facility for which only 1 person that may be liable
27 under section 4526 is identified shall be considered by the

1 allocation review panel as provided in this section in a manner
2 and at a time that will not impede the allocation process for
3 other facilities.

4 (3) After the department approves a remedial action plan, or
5 a remedial action plan is considered approved under section
6 4522, for a facility pursuant to this part and any rules promul-
7 gated under this part, the department shall notify in writing
8 each identified person that may be liable under section 4526 for
9 a facility and the orphan share administration of the approval of
10 the remedial action plan for the facility. The department shall
11 also send the orphan share administration a list of the names and
12 addresses of all identified persons that may be liable under
13 section 4526, and if requested by the orphan share administra-
14 tion, the department shall at any time provide the orphan share
15 administration with all information in the possession of the
16 department that is related to the release. Upon the request of
17 the orphan share administration, the allocation process may com-
18 mence prior to the approval of the remedial action plan. A
19 person that may be liable under section 4526 may petition the
20 orphan share administration to commence the allocation process
21 prior to the approval of the remedial action plan or the time the
22 remedial action plan is considered approved under section
23 4522(2).

24 (4) Not later than 7 days after receipt of the notice of
25 approval of a remedial action plan for the facility, the orphan
26 share administration shall notify each of the persons that may be
27 liable under section 4526 in writing of the opportunity to

1 participate in an allocation process. A person that may be
2 liable under section 4526 that intends to participate in the
3 allocation process shall notify the orphan share administration
4 in writing within 14 days of receiving notice from the orphan
5 share administration.

6 (5) If, within the 14-day period during which a person that
7 may be liable under section 4526 may indicate their intention to
8 participate in the allocation process, 1 or more of the persons
9 that may be liable under section 4526 identified in regard to a
10 facility notify the orphan share administration that the person
11 intends to participate in the allocation process, the orphan
12 share administration shall develop a schedule and plan to facili-
13 tate negotiations to determine the percentage share of response
14 costs of each person that may be liable under section 4526 and
15 any orphan share. The negotiations shall be completed within 21
16 days after the last day on which persons that may be liable under
17 section 4526 may notify the orphan share administration of the
18 intent to participate, unless all of the participants agree to
19 extend the negotiations. An extension of the negotiations does
20 not result in an extension of the time limitations provided in
21 subsections (8) and (10).

22 (6) If, during the negotiation period provided in
23 subsection (5), all of the persons that may be liable under
24 section 4526 that are participating in the allocation process
25 and the orphan share administration agree in writing to a com-
26 plete percentage allocation of response costs related to the
27 facility, the orphan share administration shall, within 3 days of

1 reaching the agreement, send a copy of the agreement to the
2 director and the attorney general.

3 (7) The attorney general on behalf of the state may enter
4 into a legally enforceable consent order with 1 or more of the
5 participants in the allocation process providing for implementa-
6 tion of the remedial action plan, payment of response costs, and
7 resolution of other potential liability under this part, includ-
8 ing liability for damages and civil fines.

9 (8) If, within the negotiation period provided in
10 subsection (5), all of the persons that may be liable under
11 section 4526 for a facility and the orphan share administration
12 do not agree in writing to a complete percentage allocation of
13 response costs related to the facility, the orphan share adminis-
14 tration shall convene an allocation review panel to determine an
15 allocation of the percentage share of response costs of each
16 person that may be liable under section 4526 including the
17 orphan share, if any. Regardless of when the allocation process
18 commences, the allocation review panel shall be convened no later
19 than 50 days after notification of the persons that may be liable
20 under section 4526 of the approval of the remedial action plan
21 for a facility. The allocation review panel shall consist of 3
22 members selected by the orphan share administration. In select-
23 ing the members for an allocation review panel, the orphan share
24 administration shall determine that a member selected for a panel
25 does not have a personal or financial interest in the outcome of
26 the allocation process.

1 (9) According to the procedures established by the orphan
2 share administration, each of the participating persons that may
3 be liable under section 4526 and the orphan share administration
4 may submit to the panel documentation and other information as
5 considered relevant by a person that may be liable under section
6 4526 or the orphan share administration. In addition, the direc-
7 tor may submit to the panel information related to the facility
8 or allocation process that the director considers relevant.

9 (10) Not later than 90 days after notification of the per-
10 sons that may be liable under section 4526 of approval of the
11 remedial action plan for a facility, the allocation review panel
12 shall issue a written determination allocating the percentage
13 share of response costs of each person that may be liable under
14 section 4526 and the orphan share, if any. In reaching a deter-
15 mination, the allocation review panel shall do all of the
16 following:

17 (a) Consider each of the following as these items relate to
18 each person that may be liable under section 4526 and the orphan
19 share, if any:

20 (i) The volume of hazardous substances transported to the
21 facility. For purposes of determining volume, a shipment of a
22 hazardous substance shall be counted 1 time when allocating a
23 percentage share of response costs between a generator and a
24 transporter of a hazardous substance.

25 (ii) The anticipated impact of the hazardous substance on
26 the cost of response activity at the facility.

1 (iii) The degree of care exercised in the disposal or
2 treatment, or both of the hazardous substance by each person that
3 may be liable under section 4526.

4 (iv) The manner in which the facility was operated and the
5 degree of care exercised by the owner or operator.

6 (v) The degree of involvement in facility operations.

7 (vi) Whether all applicable permits and licenses required by
8 law were obtained and complied with.

9 (vii) The degree of cooperation by the person with federal,
10 state, or local officials to prevent, minimize, respond to, or
11 remedy the release or threat of release.

12 (viii) Any other aggravating or mitigating factor that the
13 allocation review panel determines to be relevant.

14 (b) Consider the quality of documentation and other informa-
15 tion submitted.

16 (c) If information gaps exist, make reasonable extrapola-
17 tions from the available information as considered advisable by
18 the allocation review panel.

19 (11) A copy of the written determination of the allocation
20 review panel shall be forwarded by the panel to the director, the
21 attorney general, and to each of the participants in the alloca-
22 tion process. Within 10 days of receipt of the determination of
23 the allocation review panel, each participant shall notify the
24 orphan share administration of the participant's acceptance or
25 rejection of the panel's determination. The orphan share admin-
26 istration shall notify the allocation review panel, the director,
27 and the attorney general of the participants' decision.

1 (12) Upon completion of the allocation process under this
2 section, the percentage allocated to the orphan share and the
3 portion allocated to a person that is uncollectible for a facili-
4 ty, if any, shall be funded in full by the other persons that may
5 be liable under section 4526 for that facility in proportion to
6 the percentage that each person was assigned pursuant to the
7 allocation process.

8 (13) The attorney general on behalf of the state may enter
9 into a legally enforceable consent order with 1 or more of the
10 participants in the allocation process who are in agreement with
11 the determination of the allocation review panel providing for
12 implementation of the remedial action plan, payment of response
13 costs, and resolution of other potential liability under this
14 part, including liability for damages and civil fines.

15 (14) This section shall not be construed to limit the
16 authority of the department, or the attorney general at any time
17 to enter into an agreement in the public interest to resolve in
18 whole or in part the liability of a person under this part.

19 (15) Any allocation of percentage shares of response costs
20 under this section shall not be admissible as evidence in any
21 proceeding, except to prove, if disputed, the financial obliga-
22 tions under the terms of an allocation agreement pursuant to sub-
23 section (6) or (11) of a person who has limited its liability
24 under subsection (16). A court does not have jurisdiction to
25 review an allocation or the procedures used to determine an
26 allocation. The allocation of percentage share of response costs
27 or the procedures used to determine an allocation do not

1 constitute an apportionment or other statement on the
2 divisibility of harm or causation.

3 (16) The liability under this part of a person that may be
4 liable under section 4526, that accepts and pays its allocated
5 share of response activity costs as determined through a volun-
6 tary allocation agreement pursuant to subsection (6) or by the
7 allocation review panel pursuant to subsection (10), and who by
8 consent order or administrative order pays its portion of the
9 orphan share and the uncollectible portion pursuant to subsection
10 (12) which results in implementation of an approved remedial
11 action plan shall with respect to matters covered by the order be
12 limited to that person's allocated share of response costs. The
13 department may issue an administrative order pursuant to section
14 4519 to require a person that may be liable under section 4526
15 to implement the plan approved by the department. To be enforce-
16 able, the order described in this subsection shall not require
17 that the department determine that there may be an imminent and
18 substantial endangerment to the public health, safety, or wel-
19 fare, or the environment prior to issuance of the order. In an
20 action for reimbursement pursuant to section 4519(5), if the
21 court upholds the order, the court shall assess against the peti-
22 tioner the full costs of defending this proceeding, including
23 attorney fees.

24 (17) If a person that may be liable under section 4526 par-
25 ticipates in the allocation process set forth in this subsection,
26 the director and the attorney general shall not commence an
27 action under section 4519 or 4537 against the participating

1 person for a period of 120 days after the persons that may be
2 liable under section 4526 are notified of the approval of a
3 remedial action plan. If the director and the attorney general
4 determine that the parties are bargaining in good faith and that
5 an extension of this moratorium would facilitate an agreement
6 with the persons that may be liable under section 4526 for
7 taking response activity, they may extend the moratorium for an
8 additional period of up to 30 days.

9 (18) Notwithstanding subsection (17), this section does not
10 limit the department's authority to undertake response activity
11 at any time or the attorney general's authority to undertake
12 enforcement action against any person that may be liable under
13 section 4526 that does not participate in the allocation
14 process.

15 (19) The attorney general may file an action under section
16 4537 to recover all costs incurred by the orphan share adminis-
17 tration from persons that refuse to participate in the allocation
18 process or in the remedial action on the basis of their allocated
19 share.

20 (20) The orphan share administration shall promulgate rules
21 establishing a loan program to provide loans to small businesses
22 that may be liable under section 4526. A loan shall be provided
23 to assist a small business in fulfilling any of its responsibili-
24 ties in undertaking a response activity in compliance with this
25 part and the rules promulgated under this part, except if the
26 small business is convicted of violating section 4539. A loan
27 shall not be made under this section until rules are promulgated

1 establishing the loan program described in this subsection. To
2 be eligible for a loan under this section, a small business shall
3 submit to the orphan share administration evidence that is satis-
4 factory to the orphan share administration that the small busi-
5 ness has taken or is taking action necessary to prevent future
6 releases and to otherwise comply with this part and applicable
7 state and federal environmental law. As used in this subsection,
8 small business means a business concern incorporated or doing
9 business in this state that has a net worth of less than
10 \$10,000,000.00, including the affiliates of the business concern
11 that are independently owned and operated.

12 (21) The orphan share administration is created within the
13 department of management and budget. The orphan share adminis-
14 tration shall administer the allocation process as provided in
15 this section. The department of management and budget shall pro-
16 vide the orphan share administration with sufficient staff and
17 services to allow it to carry out its responsibilities under this
18 section.

19 Sec. 4526. (1) Notwithstanding any other provision or rule
20 of law and subject only to the defenses set forth in sections
21 4527 and 4528, if there is a release or threatened release from a
22 facility that causes the incurrence of response activity costs,
23 the following persons shall be liable under this section:

24 (a) The owner or operator of the facility.

25 (b) The owner or operator of the facility at the time of
26 disposal of a hazardous substance.

1 (c) The owner or operator of the facility since the time of
2 disposal of a hazardous substance not included in subdivision (a)
3 or (b).

4 (d) A person that by contract, agreement, or otherwise
5 arranged for disposal or treatment, or arranged with a trans-
6 porter for transport for disposal or treatment, of a hazardous
7 substance owned or possessed by the person, by any other person,
8 at the facility owned or operated by another person and contain-
9 ing the hazardous substance.

10 (e) A person that accepts or accepted any hazardous sub-
11 stance for transport to the facility selected by that person.

12 (2) A person described in subsection (1) is liable for all
13 of the following:

14 (a) All costs of response activity lawfully incurred by the
15 state relating to the selection and implementation of response
16 activity under this part.

17 (b) Any other necessary costs of response activity incurred
18 by any other person consistent with rules relating to the selec-
19 tion and implementation of response activity promulgated under
20 this part.

21 (c) Damages for the full value of injury to, destruction of,
22 or loss of natural resources, including the reasonable costs of
23 assessing the injury, destruction, or loss resulting from the
24 release.

25 (3) The costs of response activity recoverable under subsec-
26 tion (2) shall also include:

1 (a) All costs of response activity reasonably incurred by
2 the state prior to the date upon which rules were promulgated
3 relating to the selection and implementation of response activity
4 under former Act No. 307 of the Public Acts of 1982, excepting
5 those cases where cost recovery actions have been filed before
6 July 11, 1990. A person challenging the recovery of costs under
7 this subdivision has the burden of establishing that the costs
8 were not reasonably incurred under the circumstances that existed
9 at the time the costs were incurred. Recoverable costs include
10 costs incurred reasonably consistent with the rules relating to
11 the selection and implementation of response activity in effect
12 on July 11, 1990.

13 (b) Any other necessary costs of response activity reason-
14 ably incurred by any other person prior to June 26, 1990, the
15 date upon which rules were promulgated relating to the selection
16 and implementation of response activity under former Act No. 307
17 of the Public Acts of 1982. A person seeking recovery of these
18 costs has the burden of establishing that the costs were reason-
19 ably incurred under the circumstances that existed at the time
20 the costs were incurred.

21 (4) The amounts recoverable in an action under this section
22 include interest on the amounts recoverable under subsections (2)
23 and (3). This interest accrues from the date payment is demanded
24 in writing, or the date of the expenditure or damage, whichever
25 is later. The rate of interest on the outstanding unpaid balance
26 of the amounts recoverable under this section is the same rate as
27 is specified in section 6013(5) of the revised judicature act of

1 1961, Act No. 236 of the Public Acts of 1961, being section
2 600.6013 of the Michigan Compiled Laws.

3 (5) A person shall not be required under this part to under-
4 take response activity for a permitted release. Recovery by any
5 person for response activity costs or damages resulting from a
6 permitted release shall be pursuant to other applicable law, in
7 lieu of this part. This subsection does not affect or modify in
8 any way the obligations or liability of any person under any
9 other state law, including common law, for damages, injury, or
10 loss resulting from a release of a hazardous substance or for
11 response activity or the costs of response activity.

12 (6) If the director determines that there may be an imminent
13 and substantial endangerment to the public health or welfare or
14 the environment because of an actual or threatened release from a
15 facility, the attorney general may bring an action against any
16 person described in subsection (1) or any other appropriate
17 person to secure the relief that may be necessary to abate the
18 danger or threat. The court has jurisdiction to grant such
19 relief as the public interest and the equities of the case may
20 require.

21 (7) In establishing liability under this section, the
22 department bears the burden of proof. If the department proves a
23 prima facie case against a person, the person shall bear the
24 burden of showing by a preponderance of the evidence that they
25 are not liable under this section.

1 Sec. 4527. (1) A person is not liable under section 4526
2-if that person establishes by a preponderance of the evidence
3 that the release or threat of release was caused solely by:

4 (a) An act of God.

5 (b) An act of war.

6 (c) An act or omission of a third party other than an
7 employee or agent of the person that may be liable under section
8 4526, or other than one whose act or omission occurs in connec-
9 tion with a contractual relationship, existing directly or indi-
10 rectly, with the person that may be liable under section 4526 if
11 the person that may be liable under section 4526 establishes by
12 a preponderance of the evidence both of the following:

13 (i) That he or she exercised due care with respect to the
14 hazardous substance, taking into consideration the characteris-
15 tics of the hazardous substance, in light of all relevant facts
16 and circumstances.

17 (ii) That he or she took reasonable precautions against rea-
18 sonably foreseeable acts or omissions of a third party and the
19 consequences that foreseeably could result from those acts or
20 omissions.

21 (d) Any combination of subdivision (a), (b), or (c).

22 (2) The term contractual relationship, as used in subsection
23 (1)(c), includes, but is not limited to, land contracts, deeds,
24 or other instruments transferring title or possession, unless
25 both of the following are established:

26 (a) The real property on which the facility is located was
27 acquired by the person that may be liable under section 4526

1 after the disposal or placement of the hazardous substance on,
2 in, or at the property.

3 (b) The person that may be liable under section 4526 by a
4 preponderance of the evidence proves 1 or more of the following:

5 (i) At the time the person that may be liable under section
6 4526 acquired the property, that person did not know and had no
7 reason to know that a hazardous substance that is the subject of
8 the release or threat of a release was disposed of on, in, or at
9 the facility.

10 (ii) The person that may be liable under section 4526 is a
11 state or local unit of government that acquired the property by
12 purchase, gift, transfer, dedication, or condemnation, and, for
13 property acquired after July 1, 1991, the state or local unit of
14 government does all of the following:

15 (A) Conducts or causes to be conducted a visual inspection
16 of the property and a review of the ownership and use history of
17 the property to determine whether a probability exists that the
18 property is a facility. If the visual inspection or the owner-
19 ship and use history, or both, show that there may be a release
20 or threat of release, the state or local unit of government shall
21 conduct, or cause to be conducted, an environmental assessment of
22 the property that includes an on-site evaluation of the nature
23 and extent, if any, of the release or threat of release, and an
24 inspection of all permanent structures on the property for the
25 presence of a hazardous substance.

26 (B) Prior to final acquisition, if the environmental
27 assessment required in subparagraph (ii)(A) discloses a release

1 or threat of release, the state or local unit of government shall
2 do all of the following:

3 (I) Provide a report of the findings and conclusions of the
4 environmental assessment to the governing body of the unit of
5 government.

6 (II) Provide a public notice of the availability of the
7 report of the findings and conclusions of the environmental
8 assessment.

9 (III) Submit the report and the environmental assessment to
10 the department.

11 (C) After final acquisition, if the environmental assessment
12 required in subparagraph (ii)(A) disclosed a release or threat of
13 release, the state or local unit of government shall provide the
14 department with a right of entry to the property at all reason-
15 able times for any of the purposes listed in section 4517(3)(a)
16 through (e).

17 (D) After final acquisition, unless waived by the director
18 through the exercise of his or her discretion, if the environmen-
19 tal assessment required in subparagraph (ii)(A) disclosed a
20 release or threat of release, the state or local unit of govern-
21 ment shall not transfer any legal interest, or any equitable or
22 possessory interest that relinquishes control over that property
23 for more than 45 days, unless the state or local unit of govern-
24 ment does all of the following:

25 (I) Provide any transferee with a copy of the environmental
26 assessment required in subparagraph (ii)(A) prior to the transfer
27 of the property.

1 (II) Include in any contract for transfer of the property a
2 statement that, absent a covenant not to sue from the state as
3 provided by section 4533, the transferee will be a person that
4 may be liable under section 4526 of this part.

5 (III) Include as a condition to the transfer in any contract
6 for the transfer of the property that the transferee agrees to
7 provide the department with a right of entry to the property at
8 all reasonable times for any of the purposes listed in section
9 4517(3)(a) through (e) related to a release or threat of release
10 disclosed in the environmental assessment required in subpara-
11 graph (ii)(A).

12 (IV) Provide the department with a copy of the contract for
13 transfer of the property and a description of the intended use of
14 the property by the transferee within 14 days of the execution of
15 the transfer.

16 (iii) The person that may be liable under section 4526
17 acquired the property by inheritance.

18 (3) In addition to establishing 1 or more of the circum-
19 stances described in subsection (2)(b)(i), (ii), or (iii), the
20 person that may be liable under section 4526 shall establish
21 that he or she has satisfied the requirements of subsection
22 (1)(c)(i) and (ii).

23 (4) To establish that the person that may be liable under
24 section 4526 had no reason to know, as required under subsection
25 (2)(b)(i), the person that may be liable under section 4526
26 shall have undertaken, at the time of acquisition, all
27 appropriate inquiry into the previous ownership and uses of the

1 property consistent with good commercial or customary practice in
2 an effort to minimize liability. For purposes of the preceding
3 sentence, the court shall take into account any specialized
4 knowledge or experience on the part of the person that may be
5 liable under section 4526, the relationship of the purchase
6 price to the value of the property if uncontaminated by a hazard-
7 ous substance, commonly known or reasonably ascertainable infor-
8 mation about the property, the obviousness of the presence or
9 likely presence of a release or threat of release at the proper-
10 ty, and the ability to detect a release or threat of release by
11 appropriate inspection.

12 (5) This section does not diminish the liability of a previ-
13 ous owner or operator of a facility that would otherwise be
14 liable under this part. Notwithstanding this section, if the
15 person that may be liable under section 4526 obtained actual
16 knowledge of the release or threat of release at the facility
17 when that person owned the real property and then transferred
18 ownership of the property to another person without disclosing
19 this knowledge, the person is liable under section 4526 and a
20 defense under this section is not available to that person. This
21 section does not affect the liability under this part of a person
22 that may be liable under section 4526 that, by an act or omis-
23 sion, caused or contributed to the release or threat of release
24 that is the subject of a response activity at the facility.

25 (6) The state or a local unit of government is not liable
26 under this part for costs or damages as a result of response
27 activity taken in response to a release or threat of release.

1 This subsection does not preclude liability for costs or damages
2 as a result of gross negligence, including reckless, willful, or
3 wanton misconduct, or intentional misconduct by the state or
4 local unit of government.

5 (7) A commercial lending institution that has not partici-
6 pated in the management of a facility prior to taking title
7 acquires a property that is a facility through foreclosure or
8 through acceptance of a deed in lieu of foreclosure for the sole
9 purpose of realizing on a security interest is not liable under
10 this part, if 1 or more of the following are true:

11 (a) The property is a residential property.

12 (b) The property is an agricultural property.

13 (c) The commercial lending institution acquired ownership or
14 control of the property involuntarily through a court order or
15 other involuntary circumstance.

16 (d) The commercial lending institution would otherwise be
17 liable solely under section 4526(1)(c) and the commercial lend-
18 ing institution acquired ownership or control of the property
19 prior to August 1, 1990.

20 (8) If a commercial lending institution that has not partici-
21 ipated in the management of a facility prior to taking title,
22 other than those properties described in subsection (7)(a) or
23 (b), conducts, within 180 days before or after taking title to
24 the property, a valid foreclosure environmental assessment prior
25 to disposition of that property, and that foreclosure environmen-
26 tal assessment does not indicate that there was a release or
27 threat of release on the property, there is a rebuttable

1 presumption that the commercial lending institution has satisfied
2 the criteria specified in subsection (1)(c) with respect to that
3 property. The defense to liability in this subsection does not
4 apply to a release that started after the date on which the com-
5 mercial lending institution acquired title to the property and
6 during the time the commercial lending institution held title to
7 the property.

8 (9) If a commercial lending institution that prior to taking
9 title of a property through foreclosure or through acceptance of
10 a deed in lieu of foreclosure has not participated in the manage-
11 ment of property, other than a property described in
12 subsection (7)(a) or (b), performs a foreclosure environmental
13 assessment on the property within 180 days before or after taking
14 title to the property, and that foreclosure environmental assess-
15 ment indicates that there is a release or threat of release on
16 that property, the commercial lending institution shall not dis-
17 pose of that property unless the commercial lending institution
18 provides the department with a complete copy of the results of
19 the foreclosure environmental assessment, and the commercial
20 lending institution enters into an agreement with the department
21 regarding disposition of the property. If a commercial lending
22 institution submits a proposal to the department regarding dispo-
23 sition of the property, the department shall, within 6 months,
24 review the proposal and either approve the proposal or submit
25 changes to the commercial lending institution that would result
26 in approval of the proposal. However, if the commercial lending
27 institution and the department are unable to reach an agreement

1 pertaining to disposition of the property, the commercial lending
2 institution shall not transfer the property, other than to the
3 state. A commercial lending institution that establishes that it
4 has met the requirements of this subsection shall not be liable
5 under section 4526 with respect to that property.

6 (10) A commercial lending institution or other person that
7 has not participated in the management of a property prior to
8 assuming ownership or control of the property as a fiduciary, as
9 defined by section 5 of the revised probate code, Act No. 642 of
10 the Public Acts of 1978, being section 700.5 of the Michigan
11 Compiled Laws, and that is acting or has acted in a capacity per-
12 mitted by the revised probate code, Act No. 642 of the Public
13 Acts of 1978, being sections 700.1 to 700.993 of the Michigan
14 Compiled Laws, is not personally liable as an owner or operator
15 of the property under this part. This subsection does not do
16 either of the following:

17 (a) Relieve the fiduciary from personal liability as the
18 result of the fiduciary's assumption of personal liability, or
19 negligence, gross negligence, or reckless, willful, or inten-
20 tional misconduct.

21 (b) Prevent claims against the assets that are part of or
22 all of the estate or trust that contains the facility; any other
23 estate or trust of the decedent, grantor, ward, or other person
24 whose estate or trust contains the facility that is administered
25 by the commercial lending institution or other person; or any
26 other estate or trust of the decedent, grantor, ward, or other
27 person whose estate or trust contains the facility. Such claims

1 may be asserted against the fiduciary in its representative
2 capacity, whether or not the fiduciary is personally liable.

3 (11) A commercial lending institution that has not partici-
4 pated in the management of a property prior to assuming ownership
5 or control of the property in a fiduciary capacity, and pursuant
6 to a fiduciary agreement entered into on or before August 1, 1990
7 owns or controls the property in a fiduciary capacity that is not
8 regulated by Act No. 642 of the Public Acts of 1978 but is autho-
9 rized by the banking code of 1969, Act No. 319 of the Public Acts
10 of 1969, being sections 487.301 to 487.598 of the Michigan
11 Compiled Laws, or the national bank act, chapter 106, 13
12 Stat. 99, is not personally liable as an owner or operator of the
13 property under this part. This subsection does not do either of
14 the following:

15 (a) Relieve the fiduciary from personal liability as the
16 result of the fiduciary's assumption of personal liability, neg-
17 ligence, gross negligence, or reckless, willful, or intentional
18 misconduct.

19 (b) Prevent claims against the assets that are part of or
20 all of the estate or trust that contains the facility; any other
21 estate or trust of the decedent, grantor, ward, or other person
22 whose estate or trust contains the facility that is administered
23 by the commercial lending institution; or any other estate or
24 trust of the decedent, grantor, ward, or other person whose
25 estate or trust contains the facility. Such claims may be
26 asserted against the fiduciary in its representative capacity,
27 whether or not the fiduciary is personally liable.

1 (12) A commercial lending institution that has not
2 participated in the management of a property prior to assuming
3 ownership or control of the property in a fiduciary capacity, and
4 pursuant to a fiduciary agreement entered into after August 1,
5 1990 owns or controls the property in a fiduciary capacity that
6 is not regulated by Act No. 642 of the Public Acts of 1978 but is
7 authorized by the banking code of 1969, Act No. 319 of the Public
8 Acts of 1969, being sections 487.301 to 487.598 of the Michigan
9 Compiled Laws, or the national bank act, chapter 106, 13
10 Stat. 99, that has served only in an administrative, custodial,
11 or financial capacity with respect to the property, and has not
12 exercised sufficient involvement to control the owner's or
13 operator's handling of a hazardous substance, is not personally
14 liable as an owner or operator of the property under this part.
15 This subsection does not do either of the following:

16 (a) Relieve the fiduciary from personal liability as the
17 result of the fiduciary's assumption of personal liability, neg-
18 ligence, gross negligence, or reckless, willful, or intentional
19 misconduct.

20 (b) Prevent claims against the assets that are part of or
21 all of the estate or trust that contains the facility; any other
22 estate or trust of the decedent, grantor, ward, or other person
23 whose estate or trust contains the facility that is administered
24 by the commercial lending institution; or any other estate or
25 trust of the decedent, grantor, ward, or other person whose
26 estate or trust contains the facility. Such claims may be

1 asserted against the fiduciary in its representative capacity,
2 whether or not the fiduciary is personally liable.

3 (13) The defenses to liability under section 4526 in
4 subsections (7) to (12) in regard to a facility do not apply when
5 a commercial lending institution, or its agent, employee, or a
6 person retained by the commercial lending institution, caused or
7 contributed to a release or threat of release.

8 (14) As used in subsections (8) and (9), "foreclosure envi-
9 ronmental assessment" means to conduct, or cause to be conducted,
10 a visual inspection of property and a review of the ownership and
11 use history of the property to determine whether there is a
12 release or threat of release. If a visual inspection or the
13 ownership and use history, or both, show that there may be a
14 release or threat of release, a site specific on-site evaluation
15 of the nature and extent, if any, of the release or threat of
16 release shall be conducted, and an inspection of all permanent
17 structures on the property to determine the presence of a hazard-
18 ous substance shall be conducted.

19 Sec. 4528. (1) A person that is a response activity con-
20 tractor for any release or threatened release is not liable to
21 any person for injuries, costs, damages, expenses, or other
22 liability, including, but not limited to, claims for indemnifica-
23 tion or contribution and claims by third parties for death, per-
24 sonal injuries, illness, or loss of or damages to property or
25 economic loss that result from the release or threatened
26 release. This subsection does not apply if a release or
27 threatened release is caused by conduct of the response activity

1 contractor that is negligent, grossly negligent, or that
2 constitutes intentional misconduct.

3 (2) This section does not affect the liability of a person
4 under any warranty under federal, state, or common law. This
5 subsection does not affect the liability of an employer who is a
6 response activity contractor to any employee of the employer
7 under law, including any provision of law relating to worker's
8 compensation.

9 (3) An employee of this state or a local unit of government
10 who provides services relating to a response activity while
11 acting within the scope of his or her authority as a governmental
12 employee has the same exemption from liability as is provided to
13 the response activity contractor under this section.

14 (4) The defense provided by section 4527(1)(c) is not
15 available to any person that may be liable under section 4526
16 with respect to any costs or damages caused by any act or omis-
17 sion of a response activity contractor. Except as provided in
18 this section, this section does not affect the liability under
19 this part or under any other federal or state law of any person.

20 (5) This section does not affect the plaintiff's burden of
21 establishing liability under this part.

22 (6) As used in this section:

23 (a) "Response activity contract" means a written contract or
24 agreement entered into by a response activity contractor with 1
25 or more of the following:

26 (i) The department.

1 (ii) The department of public health.

2 (iii) A person that may be liable under section 4526 that
3 is carrying out an agreement to undertake a response activity
4 under this part.

5 (b) "Response activity contractor" means 1 or both of the
6 following:

7 (i) A person that enters into a response activity contract
8 with respect to a release or threatened release and is carrying
9 out the terms of a contract.

10 (ii) A person that is retained or hired by a person
11 described in subparagraph (i) to provide any service relating to
12 a response activity.

13 Sec. 4529. (1) If 2 or more persons acting independently
14 cause a release or threat of release that results in response
15 activity costs, or damages for injury to, destruction of, or loss
16 of natural resources, and there is a reasonable basis for divi-
17 sion of harm according to contribution of each person, each
18 person is subject to liability under section 4526 only for the
19 portion of the total harm that the person caused. However, a
20 person seeking to limit its liability on the ground that the
21 entire harm is capable of division has the burden of proof as to
22 the divisibility of the harm and as to the apportionment of
23 liability.

24 (2) If 2 or more persons cause or contribute to an indivisi-
25 ble harm that results in response activity costs, or damages for
26 injury to, destruction of, or loss of natural resources, each

1 person is subject to liability under section 4526 for the entire
2 harm.

3 (3) A person may seek contribution from any other person who
4 is liable or may be liable under section 4526 during or follow-
5 ing a civil action brought under this part. However, a person
6 that is participating in the allocation process described in sec-
7 tion 4525 is not subject to a contribution action during the pen-
8 dency of that allocation process. This subsection does not
9 diminish the right of a person to bring an action for contribu-
10 tion in the absence of a civil action by the state under this
11 part. The court shall consider all of the following factors in
12 allocating response activity costs and damages among liable
13 persons:

14 (a) Each person's relative degree of responsibility in caus-
15 ing the release or threat of release.

16 (b) The principles of equity pertaining to contribution.

17 (c) The degree of involvement of and care exercised by the
18 person with regard to the hazardous substance.

19 (d) The degree of cooperation by the person with federal,
20 state, or local officials to prevent, minimize, respond to, or
21 remedy the release or threat of release.

22 (e) Whether equity requires that the liability of some of
23 the persons should constitute a single share.

24 (4) If, in an action for contribution under subsection (3),
25 the court determines that all or part of a person's share of
26 liability is uncollectible from that person, then the court may
27 reallocate any uncollectible amount among the other persons

1 according to the factors listed in subsection (3). A person
2 whose share is determined to be uncollectible continues to be
3 subject to contribution and to any continuing liability to the
4 state.

5 (5) A person that has resolved its liability to the state in
6 an administrative or judicially approved consent order is not
7 liable for claims for contribution regarding matters addressed in
8 the consent order. The consent order does not discharge any of
9 the other persons liable under section 4526 unless the terms of
10 the consent order provide for this discharge, but the potential
11 liability of the other persons is reduced by the amount of the
12 consent order.

13 (6) If the state obtains less than complete relief from a
14 person that has resolved its liability to the state in an admin-
15 istrative or judicially approved consent order under this part,
16 the state may bring an action against any other person liable
17 under section 4526 that has not resolved its liabilities.

18 (7) A person that has resolved its liability to the state
19 for some or all of a response activity in an administrative or
20 judicially approved consent order may seek contribution from any
21 person that is not a party to the consent order described in sub-
22 section (5).

23 (8) In an action for contribution under this section, the
24 rights of any person that has resolved its liability to the state
25 shall be subordinate to the rights of the state, if the state
26 files an action under this part.

1 Sec. 4530. (1) An indemnification, hold harmless, or
2 similar agreement or conveyance is not effective to transfer from
3 a person that may be liable under section 4526 to the state for
4 evaluation or response activity costs or damages for a release or
5 threat of release to any other person the liability imposed under
6 this part. This section does not bar an agreement to insure,
7 hold harmless, or indemnify a party to the agreement for liability
8 under this part.

9 (2) This part does not bar a cause of action that a person
10 subject to liability under this part, or a guarantor, has or
11 would have, by reason of subrogation or otherwise against any
12 person.

13 Sec. 4531. (1) Except as provided in subsection (2), the
14 liability under this part for each release or threat of release
15 shall not exceed the total of all the costs of response activities,
16 fines, and exemplary damages, plus \$50,000,000.00 damages
17 for injury to, destruction of, or loss of natural resources
18 resulting from the release or threat of release, including the
19 reasonable costs of assessing the injury, destruction, or loss
20 resulting from the release or threat of release.

21 (2) Notwithstanding the limitations in subsection (1), the
22 liability of a person under this part shall be the full and total
23 costs and damages listed in subsection (1), in either of the following
24 circumstances:

25 (a) The release or threatened release of a hazardous substance
26 was the result of willful misconduct or gross negligence
27 of the party.

1 (b) The primary cause of the release or threat of release
2 was a knowing violation of applicable safety, construction, or
3 operating standards or regulations.

4 Sec. 4532. (1) The state may, in its discretion, provide a
5 person with a covenant not to sue concerning any liability to the
6 state under this part, including future liability, resulting from
7 a release or threatened release addressed by response activities,
8 whether that action is on a facility or off a facility, if each
9 of the following is met:

10 (a) The covenant not to sue is in the public interest.

11 (b) The covenant not to sue would expedite response activity
12 consistent with rules promulgated under this part.

13 (c) There is full compliance with a consent order under this
14 part for response to the release or threatened release
15 concerned.

16 (d) The response activity has been approved by the
17 department.

18 (2) The state shall provide a person to whom the department
19 is authorized under subsection (1) to issue a covenant not to sue
20 for the portion of response activity described in subdivision (a)
21 or (b) with a covenant not to sue with respect to future liabil-
22 ity to the state under this part for a future release or threat-
23 ened release, and a person provided the covenant not to sue is
24 not liable to the state under section 4526 with respect to that
25 release or threatened release at a future time. The portion of
26 response activity to which the covenant not to sue pertains is
27 either of the following:

1 (a) The transport and secure disposition off site of
2 hazardous substances in a facility meeting the requirements of
3 sections 3004(c), (d), (e), (f), (g), (m), (o), (p), (u), and (v)
4 and 3005(c) of subtitle C of the solid waste disposal act, title
5 II of Public Law 89-272, 42 U.S.C. 6924 and 6925, if the depart-
6 ment has required off-site disposition and has rejected proposed
7 remedial action that is consistent with the rules promulgated
8 under this part that does not include off-site disposition.

9 (b) The treatment of hazardous substances so as to destroy,
10 eliminate, or permanently immobilize the hazardous constituents
11 of the substances, so that, in the judgment of the department,
12 the substances no longer present any current or currently fore-
13 seeable future significant risk to the public health, safety, or
14 welfare, or to the environment, no byproduct of the treatment or
15 destruction process presents any significant hazard to the public
16 health, safety, or welfare, or the environment, and all byprod-
17 ucts are themselves treated, destroyed, or contained in a manner
18 that assures that the byproducts do not present any current or
19 currently foreseeable future significant risk to the public
20 health, safety, or welfare, or the environment.

21 (3) A covenant not to sue concerning future liability to the
22 state shall not take effect until the department certifies that
23 remedial action has been completed in accordance with the
24 requirements of this part at the facility that is the subject of
25 the covenant.

26 (4) In assessing the appropriateness of a covenant not to
27 sue granted under subsection (1) and any condition to be included

1 in a covenant not to sue under subsection (1) or (2), the state
2 shall consider whether the covenant or condition is in the public
3 interest on the basis of factors such as the following:

4 (a) The effectiveness and reliability of the remedial
5 action, in light of the other alternative remedial actions con-
6 sidered for the facility concerned.

7 (b) The nature of the risks remaining at the facility.

8 (c) The extent to which performance standards are included
9 in the consent order.

10 (d) The extent to which the response activity provides a
11 complete remedy for the facility, including a reduction in the
12 hazardous nature of the substances at the facility.

13 (e) The extent to which the technology used in the response
14 activity is demonstrated to be effective.

15 (f) Whether the fund or other sources of funding would be
16 available for any additional response activities that might even-
17 tually be necessary at the facility.

18 (g) Whether response activity will be carried out, in whole
19 or in significant part, by persons that may be liable under
20 section 4526.

21 (5) A covenant not to sue under this section is subject to
22 the satisfactory performance by a person of its obligations under
23 the agreement concerned.

24 (6) Except for the portion of the remedial action that is
25 subject to a covenant not to sue under subsection (2) or under
26 section 4525, a covenant not to sue a person concerning future
27 liability to the state shall include an exception to the covenant

1 that allows the state to sue that person concerning future
2 liability resulting from the release or threatened release that
3 is the subject of the covenant if the liability arises out of
4 conditions that are unknown at the time the department certifies
5 under subsection (3) that remedial action has been completed at
6 the facility concerned.

7 (7) In extraordinary circumstances, the state may determine,
8 after assessment of relevant factors such as those referred to in
9 subsection (4) and volume, toxicity, mobility, strength of evi-
10 dence, ability to pay, litigative risks, public interest consid-
11 erations, precedential value, and inequities and aggravating fac-
12 tors, not to include the exception in subsection (6) if other
13 terms, conditions, or requirements of the agreement containing
14 the covenant not to sue are sufficient to provide all reasonable
15 assurances that the public health and the environment will be
16 protected from any future releases at or from the facility.

17 (8) The state is authorized to include any provisions pro-
18 viding for future enforcement action under section 4519 or 4537
19 that in the discretion of the department are necessary and appro-
20 priate to assure protection of the public health, safety, wel-
21 fare, and the environment.

22 Sec. 4533. (1) The state may provide a person who proposes
23 to redevelop or reuse a facility, including a vacant manufactur-
24 ing or abandoned industrial site, with a covenant not to sue con-
25 cerning liability under section 4526, if all of the following
26 conditions are met:

1 (a) The covenant not to sue is in the public interest.

2 (b) The covenant not to sue will yield new resources to
3 facilitate implementation of response activity.

4 (c) The covenant not to sue would expedite response activity
5 consistent with the rules promulgated under this part.

6 (d) Based upon available information, the department deter-
7 mines that the redevelopment or reuse of the facility is not
8 likely to do any of the following:

9 (i) Exacerbate or contribute to the existing release or
10 threat of release.

11 (ii) Interfere with the implementation of response
12 activities.

13 (iii) Pose health risks related to the release or threat of
14 release to persons who may be present at or in the vicinity of
15 the facility.

16 (e) The proposal to redevelop or reuse the facility has eco-
17 nomic development potential.

18 (2) A person that requests a covenant not to sue under
19 subsection (1) shall demonstrate to the satisfaction of the state
20 all of the following:

21 (a) That the person is financially capable of redeveloping
22 and reusing the facility in accordance with the covenant not to
23 sue.

24 (b) That the person is not affiliated in any way with any
25 person that may be liable under section 4526 for a release or
26 threat of release at the facility.

1 (c) That the redevelopment or reuse of the facility by the
2 person will not result in a release or threat of release.

3 (3) A covenant not to sue issued under this section shall
4 address only past releases or threats of release at a facility
5 and shall expressly reserve the right of the state to assert all
6 other claims against the person who proposes to redevelop or
7 reuse the facility, including, but not limited to, those claims
8 arising from any of the following:

9 (a) The release or threat of release of any hazardous sub-
10 stance resulting from the redevelopment or reuse of the
11 facility.

12 (b) Exacerbation or contribution of the existing release or
13 threat of release.

14 (c) Interference with, or failure to cooperate with the
15 department, its contractors, or other persons conducting response
16 activities approved by the department.

17 (d) Failure to exercise due care with respect to any release
18 or threat of release at the facility.

19 (4) A covenant not to sue issued under this section shall
20 provide for an irrevocable right of entry to the department, its
21 contractors, or other persons performing response activity
22 related to the release or threat of release addressed by the cov-
23 enant not to sue for the purposes listed in section 4517(3)(a)
24 through (e) and for monitoring compliance with the covenant not
25 to sue.

26 Sec. 4534. (1) The director and the attorney general may
27 enter into a consent order with a person liable under section

1 4526- or any group of persons liable under section 4526 to perform
2 a response activity if the director and the attorney general
3 determine that the persons liable under section 4526 will prop-
4 erly implement the response activity, and that the consent order
5 is in the public interest, will expedite effective response
6 activity, and will minimize litigation. The consent order may
7 provide, as determined appropriate by the director and the attor-
8 ney general, for implementation by a person or any group of per-
9 sons liable under section 4526 of any portion of response activ-
10 ity at the facility. A decision of the attorney general not to
11 enter into a consent order under this part is not subject to
12 judicial review.

13 (2) Whenever practicable and in the public interest, as
14 determined by the director, the director and the attorney general
15 shall as promptly as possible reach a final settlement with a
16 person in an administrative or civil action under this part if
17 this settlement involves only a minor portion of the response
18 costs at the facility concerned and, in the judgment of the
19 director and the attorney general, the conditions in either of
20 the following are met:

21 (a) Both of the following are minimal in comparison to other
22 hazardous substances at the facility:

23 (i) The amount of the hazardous substances contributed by
24 that person to the facility.

25 (ii) The toxic or other hazardous effects of the substances
26 contributed by that person to the facility.

1 (b) Except as provided in subsection (3), the person meets
2 all of the following conditions:

3 (i) The person is the owner of the real property on or in
4 which the facility is located.

5 (ii) The person did not conduct or permit the generation,
6 transportation, storage, treatment, or disposal of any hazardous
7 substance at the facility.

8 (iii) The person did not contribute to the release or threat
9 of release of a hazardous substance at the facility through any
10 action or omission.

11 (3) A settlement shall not be made under subsection (2)(b)
12 if the person purchased the real property with actual or con-
13 structive knowledge that the property was used for the genera-
14 tion, transportation, storage, treatment, or disposal of a haz-
15 ardous substance.

16 (4) A settlement under subsection (2) may be set aside if
17 information obtained after the settlement indicates that the
18 person settling does not meet the conditions set forth in subsec-
19 tion (2)(a) or (b).

20 Sec. 4535. (1) Except as otherwise provided in this part, a
21 person, including a local unit of government on behalf of its
22 citizens, whose health or enjoyment of the environment is or may
23 be adversely affected by a release from a facility or threat of
24 release from a facility, other than a permitted release or a
25 release in compliance with applicable federal, state, and local
26 air pollution control laws, by a violation of this part or a rule
27 promulgated or order issued under this part, or by the failure of

1 the directors to perform a nondiscretionary act or duty under
2 this part, may commence a civil action against any of the
3 following:

4 (a) An owner or operator for injunctive relief necessary to
5 prevent irreparable harm to the public health, safety, or wel-
6 fare, or the environment from a release or threatened release in
7 relation to that facility.

8 (b) A person that is alleged to be in violation of this part
9 or a rule promulgated or order issued under this part in relation
10 to that facility.

11 (c) One or more of the directors if it is alleged that 1 or
12 more of the directors failed to perform a nondiscretionary act or
13 duty under this part.

14 (2) The circuit court has jurisdiction in actions brought
15 under subsection (1)(a) to grant injunctive relief necessary to
16 protect the public health, safety, or welfare, or the environment
17 from a release or threatened release. The circuit court has
18 jurisdiction in actions brought under subsection (1)(b) to
19 enforce this part or a rule promulgated or order issued under
20 this part by ordering such action as may be necessary to correct
21 the violation, and to impose any civil fine provided for in this
22 part for the violation. A civil fine recovered under this sec-
23 tion shall be deposited in the fund. The circuit court has
24 jurisdiction in actions brought under subsection (1)(c) to order
25 1 or more of the directors to perform the nondiscretionary act or
26 duty concerned.

1 (3) An action shall not be filed under subsection (1)(a) or
2 (b) unless all of the following conditions exist:

3 (a) The plaintiff has given at least 60 days' notice in
4 writing of the plaintiff's intent to sue, the basis for the suit,
5 and the relief to be requested to each of the following:

6 (i) The department.

7 (ii) The attorney general.

8 (iii) The proposed defendants.

9 (b) The state has not commenced and is not diligently prose-
10 cuting an action under this part or under other appropriate legal
11 authority to obtain injunctive relief concerning the facility or
12 to require compliance with this part or a rule or an order under
13 this part.

14 (4) An action shall not be filed under subsection (1)(c)
15 until the plaintiff has given in writing at least 60 days' notice
16 to the directors of the plaintiff's intent to sue, the basis for
17 the suit, and the relief to be requested.

18 (5) In issuing a final order in an action brought pursuant
19 to this section, the court may award costs of litigation, includ-
20 ing reasonable attorney and expert witness fees to the prevailing
21 or substantially prevailing party if the court determines that an
22 award is appropriate.

23 (6) This section does not affect or otherwise impair the
24 rights of any person under federal, state, or common law.

25 (7) An action under subsection (1)(a) or (b) shall be
26 brought in the circuit court for the circuit in which the alleged
27 release, threatened release, or other violation occurred. An

1 action under subsection (1)(c) shall be brought in the circuit
2 court for Ingham county.

3 Sec. 4536. (1) The department may promulgate rules to
4 establish a grant program to provide grants to individuals who
5 may be adversely affected by hazardous substances from a site
6 that is listed under section 4505, and who live within 2 miles of
7 the listed site. The grants shall be provided only to enable
8 individuals to obtain expert advice and technical assistance
9 regarding the response activities at sites that affect them.
10 Grants shall not be issued under this section until the depart-
11 ment promulgates rules to establish criteria for the issuing of
12 grants. In determining which applicants receive grants, the
13 department shall consider the potential health impacts of the
14 site on the applicant, the complexity and scope of the necessary
15 remedial action at the site, and the ability of the applicant to
16 obtain expert advice and technical assistance in the absence of
17 the grant.

18 (2) Persons that may be liable under section 4526 are not
19 eligible for grants under this section.

20 (3) Grants shall be provided under this section subject to
21 the availability of appropriations from the general fund.

22 Sec. 4537. (1) In addition to other relief authorized by
23 law, the attorney general may, on behalf of the state, commence a
24 civil action seeking 1 or more of the following:

25 (a) Temporary or permanent injunctive relief necessary to
26 protect the public health, safety, or welfare, or the environment
27 from the release or threat of release.

1 (b) Recovery of state response activity costs pursuant to
2 section 4526.

3 (c) Damages for the full value of injury to, destruction of,
4 or loss of natural resources resulting from the release or threat
5 of release, including the reasonable costs of assessing the
6 injury, destruction, or loss resulting from the release or threat
7 of release.

8 (d) A declaratory judgment on liability for future response
9 costs and damages.

10 (e) A civil fine of not more than \$1,000.00 for each day of
11 noncompliance without sufficient cause with a written request of
12 the director pursuant to section 4514(4). A fine imposed under
13 this subdivision shall be based on the seriousness of the viola-
14 tion and any good faith efforts of the person to comply with the
15 request of the director.

16 (f) A civil fine of not more than \$10,000.00 for each day of
17 violation of this part or a rule promulgated under this part. A
18 fine imposed under this subdivision shall be based upon the seri-
19 ousness of the violation and any good faith efforts of the person
20 to comply with this part or a rule promulgated under this part.

21 (g) A civil fine of not more than \$25,000.00 for each day of
22 violation of a judicial order or an administrative order issued
23 pursuant to section 4519, including exemplary damages pursuant
24 to section 4519.

25 (h) Enforcement of an administrative order issued pursuant
26 to section 4519.

1 (i) Enforcement of information gathering and entry authority
2 pursuant to section 4517.

3 (j) Enforcement of the reporting requirements under section
4 4514.

5 (k) Any other relief necessary for the enforcement of this
6 part.

7 (2) If an action is brought under this part by a plaintiff
8 other than the attorney general, the plaintiff shall, at the time
9 of filing, provide a copy of the complaint to the attorney
10 general.

11 (3) Except as otherwise provided in this part, an action
12 brought under this part may be brought in the circuit court for
13 the county of Ingham, in the county in which the defendant
14 resides, has a place of business, or in which the registered
15 office of a defendant corporation is located, or in the county
16 where the release occurred.

17 (4) A state court does not have jurisdiction to review chal-
18 lenges to a response activity selected or approved by the depart-
19 ment under this part, or to review an administrative order issued
20 under this part in any action except an action that is 1 of the
21 following:

22 (a) An action to recover response costs, damages, or for
23 contribution.

24 (b) An action by the state to enforce an administrative
25 order under this part or by any other person under section
26 4535(1)(b) to enforce an administrative order or to recover a
27 fine for violation of an order.

1 (c) An action pursuant to section 4519(5) for review of a
2 decision by the department denying or limiting reimbursement.

3 (d) An action pursuant to section 4535 challenging a
4 response activity selected or approved by the department, if the
5 action is filed after the completion of the response activity.

6 (e) An action by the state pursuant to section 4526(6) to
7 compel response activity.

8 (5) In any judicial action under this part, judicial review
9 of any issues concerning the selection or adequacy of a response
10 activity taken, ordered, or agreed to by the state are limited to
11 the administrative record. If the court finds that the record is
12 incomplete or inadequate, the court may consider supplemental
13 material in the action. In considering objections raised in a
14 judicial action under this part, the court shall uphold the
15 state's decision in selecting a response activity unless the
16 objecting party can demonstrate based on the administrative
17 record that the decision was arbitrary and capricious or other-
18 wise not in accordance with law. In reviewing alleged procedural
19 errors, the court may disallow costs or damages only to the
20 extent the errors were so serious and related to matters of such
21 central importance that the activity would have been signifi-
22 cantly changed had the errors not been made.

23 (6) In an action commenced under this part, any person may
24 intervene as a matter of right if that person claims an interest
25 relating to the subject matter of the action and is situated so
26 that the disposition of the action may, as a practical matter,
27 impair or impede the person's ability to protect that interest,

1 unless the court finds the person's interest is adequately
2 represented by an existing party.

3 Sec. 4538. (1) All unpaid costs and damages for which a
4 person is liable under section 4526 constitutes a lien in favor
5 of the state upon a facility that has been the subject of
6 response activity by the state and is owned by that person. A
7 lien under this subsection has priority over all other liens and
8 encumbrances except liens and encumbrances recorded before the
9 date the lien under this subsection is recorded. A lien under
10 this subsection arises when the state first incurs costs for
11 response activity at the facility for which the person is
12 responsible.

13 (2) If the attorney general determines that the lien pro-
14 vided in subsection (1) is insufficient to protect the interest
15 of the state in recovering response costs at a facility, the
16 attorney general may file a petition in the circuit court of the
17 county in which the facility is located seeking either or both of
18 the following:

19 (a) A lien upon the facility subject to response activity
20 that takes priority over all other liens and encumbrances that
21 are or have been recorded on the facility.

22 (b) A lien upon real or personal property or rights to real
23 or personal property, other than the facility, owned by the
24 person described in subsection (1), having priority over all
25 other liens and encumbrances except liens and encumbrances
26 recorded prior to the date the lien under this subsection is

1 recorded. However, the following are not subject to the lien
2 provided for in this subdivision:

3 (i) Assets of a qualified pension plan or individual retire-
4 ment account under the internal revenue code.

5 (ii) Assets held expressly for the purpose of financing a
6 dependent's college education.

7 (iii) Up to \$500,000.00 in nonbusiness real or personal
8 property or rights to nonbusiness real or personal property,
9 except that not more than \$25,000.00 of this amount may be cash
10 or securities.

11 (3) A petition submitted pursuant to subsection (2) shall
12 set forth with as much specificity as possible the type of lien
13 sought, the property that would be affected, and the reasons the
14 attorney general believes the lien is necessary. Upon receipt of
15 a petition under subsection (2), the court shall promptly sched-
16 ule a hearing to determine whether the petition should be
17 granted. Notice of the hearing shall be provided to the attorney
18 general, the property owner, and any persons holding liens or
19 perfected security interests in the real property subject to
20 response activity.

21 (4) In addition to the lien provided in subsections (1) and
22 (2), if the state incurs costs for response activity that
23 increases the market value of real property that is the location
24 of a release or threatened release, the increase in value caused
25 by the state funded response activity, to the extent the state
26 incurred unpaid costs and damages, constitute a lien in favor of
27 the state upon the real property. This lien has priority over

1 all other liens or encumbrances that are or have been recorded
2 upon the property.

3 (5) A lien provided in subsection (1), (2), or (4) is per-
4 fected against real property when a notice of lien is filed by
5 the department with the register of deeds in the county in which
6 the real property is located. A lien upon personal property pro-
7 vided in subsection (2) is perfected when a notice of lien is
8 filed by the department in accordance with applicable law and
9 regulation for the perfection of a lien on that type of personal
10 property. In addition, the department shall, at the time of the
11 filing of the notice of lien, provide a copy of the notice of
12 lien to the owner of that property by certified mail.

13 (6) A lien under this section continues until the liability
14 for the costs and damages is satisfied or resolved or becomes
15 unenforceable through the operation of the statute of limitations
16 provided in section 4540.

17 (7) Upon satisfaction of the liability secured by the lien,
18 the department shall file a notice of release of lien in the same
19 manner as provided in subsection (5).

20 (8) If the department, at or prior to the time of filing the
21 notice of release of lien pursuant to subsection (7), has made a
22 determination that the person liable under section 4526 has com-
23 pleted all of the response activity at the real property pursuant
24 to the approved remedial action plan, the department shall exe-
25 cute and file with the notice of release of lien a document stat-
26 ing that all response activities required in the approved
27 remedial action plan have been completed.

1 Sec. 4539. (1) The penalties provided in this section only
2 apply to a release that occurs after July 1, 1991.

3 (2) A person that knowingly releases or causes the release
4 of a hazardous substance contrary to applicable federal, state,
5 or local requirements or contrary to any permit or license held
6 by that person, and that knew or should have known that the
7 release could cause personal injury or property damage, or that
8 intentionally makes a false statement, representation, or certi-
9 fication in any application, record, report, plan, or other docu-
10 ment filed or required to be maintained under this part and rules
11 promulgated under this part, or that intentionally renders inac-
12 curate any monitoring device or record required to be maintained
13 under this part or a rule promulgated under this part, is guilty
14 of a felony and shall be fined not less than \$2,500.00 or more
15 than \$25,000.00 for each violation. The court may impose an
16 additional fine of not more than \$25,000.00 for each day during
17 which the release occurred. If the conviction is for a violation
18 committed after a first conviction of the person under this sub-
19 section, the court shall impose a fine of not less than
20 \$25,000.00 and not more than \$50,000.00 per day of violation.
21 Upon conviction, in addition to a fine, the court in its discre-
22 tion may sentence the defendant to imprisonment for not more than
23 2 years or impose probation upon a person for a violation of this
24 part. With the exception of the issuance of criminal complaints,
25 issuance of warrants, and the holding of an arraignment, the cir-
26 cuit court for the county in which the violation occurred has
27 exclusive jurisdiction.

1 (3) Upon a finding by the court that the action of a
2 criminal defendant poses or posed a substantial endangerment to
3 public health, safety, or welfare, the court shall impose, in
4 addition to the penalties set forth in subsection (2), a fine of
5 not less than \$1,000,000.00 and, in addition to a fine, a sen-
6 tence of 5 years' imprisonment.

7 (4) To find a defendant criminally liable for substantial
8 endangerment under subsection (3), the court shall determine that
9 the defendant knowingly or recklessly acted in such a manner as
10 to cause a danger of death or serious bodily injury and that
11 either of the following has occurred:

12 (a) The defendant had an actual awareness, or belief, or
13 understanding, that his or her conduct would cause a substantial
14 danger of death or serious bodily injury.

15 (b) The defendant acted in gross disregard of the standard
16 of care that any reasonable person would observe in similar
17 circumstances.

18 (5) Knowledge possessed by a person other than the defendant
19 under subsection (4) may be attributable to the defendant if the
20 defendant took affirmative steps to shield himself or herself
21 from the relevant information.

22 (6) The department may pay an award of up to \$10,000.00 to
23 an individual who provides information leading to the arrest and
24 conviction of a person for a violation of this section. The
25 department shall promulgate rules that prescribe criteria for
26 granting awards under this section. An award shall not be made
27 under this section until rules are promulgated prescribing the

1 criteria for making awards. Awards under this subsection may be
2 paid from the Michigan environmental assurance fund, if enabling
3 legislation creating the fund is enacted into law.

4 (7) "Serious bodily injury" means bodily injury that
5 involves a substantial risk of death, unconsciousness, extreme
6 physical pain, protracted and obvious disfigurement, or pro-
7 tracted loss or impairment of the function of a bodily member,
8 organ, or mental faculty.

9 Sec. 4540. (1) Except as provided in subsection (2), the
10 limitation period for filing actions under this part is as
11 follows:

12 (a) For the recovery of response activity costs and natural
13 resources damages pursuant to section 4526(2)(a), (b), or (c),
14 within 6 years of initiation of physical on-site construction
15 activities for the remedial action selected or approved by the
16 department at a facility, except as provided in subdivision (b).

17 (b) For 1 or more subsequent actions for recovery of
18 response activity costs pursuant to section 4526, at any time
19 during the response activity, if commenced not later than 3 years
20 after the date of completion of all response activity at the
21 facility.

22 (c) For civil fines under this part, within 3 years after
23 discovery of the violation for which the civil fines are
24 assessed.

25 (2) For recovery of response activity costs and natural
26 resources damages that accrued prior to July 1, 1991, the

1 limitation period for filing actions under this part is July 1,
2 1994.

3 Sec. 4541. (1) By July 1, 1993, a citizens review board
4 shall be established. The review board shall consist of 6 mem-
5 bers of the general public and the director of the legislative
6 service bureau division of science and technology who shall serve
7 as the nonvoting chairperson. The public members of the review
8 board shall reflect a cross section of small business, large cor-
9 porate business, local units of government, and environmental
10 organizations. Specifically, the review board shall have 3 mem-
11 bers representative of the environmental community and 3 members
12 representative of business interests or local units of govern-
13 ment, or both.

14 (2) Two members of the review board shall be appointed by
15 the governor, 2 members shall be appointed by the speaker of the
16 house of representatives, and 2 members shall be appointed by the
17 senate majority leader.

18 (3) The review board shall submit to the standing committees
19 of the senate and the house of representatives that address leg-
20 islation pertaining to the environment and the natural resources
21 of this state a report that contains a full review of the opera-
22 tion of the amendments to former Act No. 307 of the Public Acts
23 of 1982 that became effective July 1, 1991. The report shall
24 include a summary of the effectiveness of those amendments, rec-
25 ommendations for amendments to this part, and other information
26 that the legislative committees described in this subsection may
27 request at the time of the establishment of the review board.

1 (4) The department shall provide the review board with both
2 of the following:

3 (a) The department's recommendations regarding amendments to
4 this part that the department concludes would improve this part.

5 (b) The department's evaluation of the effectiveness of this
6 part.

7 (5) Within 6 months after the establishment of the review
8 board, the review board shall issue its report as provided in
9 this section and the review board shall be disbanded. Funding
10 for the review board shall be provided from the fund and shall
11 not exceed \$100,000.00. Members of the review board shall
12 receive as compensation a per diem allotment equal to the per
13 diem received by the commission and shall receive actual and nec-
14 essary expenses incurred by review board members in carrying out
15 their responsibilities under this section.

16 PART 47 UNDERGROUND STORAGE TANK REGULATION

17 Sec. 4701. As used in this part:

18 (a) "Board" means the state fire safety board created in
19 section 3b of the fire prevention code, Act No. 207 of the Public
20 Acts of 1941, being section 29.3b of the Michigan Compiled Laws.

21 (b) "Department" means the department of state police, fire
22 marshal division.

23 (c) "Director" means the director of the department of state
24 police.

25 (d) "Fund" means the underground storage tank regulatory
26 enforcement fund created in section 4704.

1 (e) "Local unit of government" means a municipality, county,
2 or governmental authority, or any combination of municipalities,
3 counties, or governmental authorities.

4 (f) "Natural gas" means natural gas, synthetic gas, and man-
5 ufactured gas.

6 (g) "Operator" means a person who is presently, or was at
7 the time of a release, in control of, or responsible for, the
8 operation of an underground storage tank system.

9 (h) "Owner" means a person who holds, or at the time of a
10 release held, a legal, equitable, or possessory interest of any
11 kind in an underground storage tank system, or in the property on
12 which an underground storage tank system is located, including,
13 but not limited to, a trust, vendor, vendee, lessor, or lessee.
14 However, owner does not include a person or a regulated financial
15 institution who, without participating in the management of an
16 underground storage tank system and who is not otherwise engaged
17 in petroleum production, refining, or marketing relating to the
18 underground storage tank system, is acting in a fiduciary capac-
19 ity or who holds indicia of ownership primarily to protect the
20 person's or the regulated financial institution's security inter-
21 est in the underground storage tank system or the property on
22 which it is located. This exclusion does not apply to a grantor,
23 beneficiary, remainderman, or other person who could directly or
24 indirectly benefit financially from the exclusion other than by
25 the receipt of payment for fees and expenses related to the
26 administration of a trust.

1 (i) "Release" means any spilling, leaking, emitting,
2 discharging, escaping, leaching, or disposing from an underground
3 storage tank system into groundwater, surface water, or subsur-
4 face soils.

5 (j) "Regulated substance" means either of the following:

6 (i) A substance defined in section 101(14) of title I of the
7 comprehensive environmental response, compensation, and liability
8 act of 1980, Public Law 96-510, 42 U.S.C. 9601, but not including
9 a substance regulated as a hazardous waste under subtitle C of
10 the solid waste disposal act, title II of Public Law 89-272, 42
11 U.S.C. 6921 to 6931 and 6933 to 6939b.

12 (ii) Petroleum, including crude oil or any fraction of crude
13 oil that is liquid at standard conditions of temperature and
14 pressure (60 degrees Fahrenheit and 14.7 pounds per square inch
15 absolute). Petroleum includes but is not limited to mixtures of
16 petroleum with de minimis quantities of other regulated sub-
17 stances, and petroleum-based substances comprised of a complex
18 blend of hydrocarbons derived from crude oil through processes of
19 separation, conversion, upgrading, or finishing such as motor
20 fuels, jet fuels, distillate fuel oils, residual fuel oils,
21 lubricants, and petroleum solvents.

22 (k) "Underground storage tank system" means a tank or combi-
23 nation of tanks, including underground pipes connected to the
24 tank or tanks, which is, was, or may have been, used to contain
25 an accumulation of regulated substances, and the volume of which,
26 including the volume of the underground pipes connected to the
27 tank or tanks, is 10% or more beneath the surface of the ground.

1 An underground storage tank system does not include any of the
2 following:

3 (i) A farm or residential tank of 1,100 gallons or less
4 capacity used for storing motor fuel for noncommercial purposes.

5 (ii) A tank used for storing heating oil for consumptive use
6 on the premises where the tank is located.

7 (iii) A septic tank.

8 (iv) A pipeline facility, including gathering lines regu-
9 lated under either of the following:

10 (A) The natural gas pipeline safety act of 1968, Public Law
11 90-481, 49 U.S.C. Appx 1671 to 1677, 1679a to 1682, and 1683 to
12 1687.

13 (B) Sections 201 to 215, 217, and 219 of the hazardous
14 liquid pipeline safety act of 1979, title II of Public Law
15 96-129, 49 U.S.C. Appx 2001 to 2015.

16 (v) A surface impoundment, pit, pond, or lagoon.

17 (vi) A storm water or wastewater collection system.

18 (vii) A flow-through process tank.

19 (viii) A liquid trap or associated gathering lines directly
20 related to oil or gas production and gathering operations.

21 (ix) A storage tank situated in an underground area, such as
22 a basement, cellar, mineworking, drift, shaft, or tunnel if the
23 storage tank is situated upon or above the surface of the floor.

24 (x) Any pipes connected to a tank that is described in sub-
25 paragraphs (i) to (xvi).

26 (xi) An underground storage tank system holding hazardous
27 wastes listed or identified under subtitle C of the solid waste

1 disposal act, title II of Public Law 89-272, 42 U.S.C. 6921 to
2 6931 and 6933 to 6939b or a mixture of such hazardous waste and
3 other regulated substances.

4 (xii) A wastewater treatment tank system that is part of a
5 wastewater treatment facility regulated under section 307(b) of
6 title III of the federal water pollution control act,
7 chapter 758, 86 Stat. 856, or section 402 of title IV of the fed-
8 eral water pollution control act, chapter 758, 86 Stat. 880, 33
9 U.S.C. 1317 and 1342.

10 (xiii) Equipment or machinery that contains regulated sub-
11 stances for operational purposes such as hydraulic lift tanks and
12 electrical equipment tanks.

13 (xiv) An underground storage tank system with a capacity of
14 110 gallons or less.

15 (xv) An underground storage tank system that contains a de
16 minimis concentration of regulated substances.

17 (xvi) An emergency spill or overflow containment underground
18 storage tank system that is expeditiously emptied after use.

19 Sec. 4702. (1) The owner of an underground storage tank
20 system shall register and annually renew the registration on the
21 underground storage tank system with the department.

22 (2) The owner of an underground storage tank system shall
23 register the underground storage tank system with the department
24 prior to bringing the underground storage tank system into use.

25 (3) The department shall accept the registration or renewal
26 of registration of an underground storage tank system under this

1 section only if the owner of the underground storage tank system
2 pays the registration fee specified in subsection (8).

3 (4) Except as otherwise provided in subsections (5) and (6),
4 the owner of an underground storage tank system registered under
5 subsection (1) or (2) shall notify the department of any change
6 in the information required under section 4703 or of the removal
7 of an underground storage tank system from service.

8 (5) The owner of an underground storage tank system, the
9 contents of which are changed routinely, may indicate all the
10 materials which are stored in the underground storage tank system
11 on the registration form described in section 4703. A person
12 providing the information described in this subsection is not
13 required to notify the department of changes in the contents of
14 the underground storage tank system unless the material to be
15 stored in the system differs from the information provided on the
16 registration form.

17 (6) Except as otherwise provided in section 4703(2), the
18 owner of an underground storage tank system registered under sub-
19 section (1) or (2) is not required to notify the department of a
20 test conducted on the tank system but shall furnish this informa-
21 tion upon request of the department.

22 (7) Upon the request of a local unit of government in which
23 an underground storage tank system is located, the department
24 shall forward a copy of registration or notification of change to
25 the local unit of government where the underground storage tank
26 system is located.

1 (8) Except as provided in section 4704(3), the owner of an
2 underground storage tank system, upon registration or renewal of
3 registration, shall pay a registration fee of \$100.00 for each
4 underground storage tank included in that underground storage
5 tank system. The department shall deposit all registration fees
6 it collects into the fund.

7 (9) The board may promulgate rules that require proof of
8 registration under this part to be attached to the underground
9 storage tank system or to the property where the underground
10 storage tank system is located.

11 (10) Except as otherwise provided in this subsection, an
12 underground storage tank system or an underground storage tank
13 that is part of the system that has been closed or removed pursu-
14 ant to rules promulgated under this part is exempt from the
15 requirements of this section. However, the owner of an under-
16 ground storage tank system or an underground storage tank that is
17 part of the system that has been closed or removed shall notify
18 the department of the closure or removal pursuant to rules
19 promulgated by the board under this part. The owner of an under-
20 ground storage tank system shall continue to pay registration
21 fees on underground storage tanks that have been closed or
22 removed until notification of the closure or removal is provided
23 pursuant to these rules.

24 Sec. 4703. (1) The registration required by section 4702
25 shall be provided either:

1 (a) On a form provided by the department and in compliance
2 with section 9002 of subtitle I of the solid waste disposal act,
3 title II of Public Law 89-272, 42 U.S.C. 6991a.

4 (b) On a form approved by the department and in compliance
5 with section 9002 of subtitle I of the solid waste disposal act.

6 (2) If there is a suspected or confirmed release from an
7 underground storage tank system, the owner or operator of the
8 underground storage tank system shall notify the department and
9 if requested by the department shall file the following supple-
10 mentary information if known:

11 (a) The owner of the property where the underground storage
12 tank system is located.

13 (b) A history of the current and previous contents of the
14 underground storage tank system, including the generic chemical
15 name, chemical abstract service number, or trade name, whichever
16 is most descriptive of the contents, and including the date or
17 dates on which the contents were changed or removed.

18 (c) A history of the monitoring procedures and leak detec-
19 tion tests and methods employed with respect to the underground
20 storage tank system, and the resulting findings.

21 Sec. 4704. (1) The underground storage tank regulatory
22 enforcement fund is created in the state treasury. The fund may
23 receive money as provided in this part and as otherwise provided
24 by law. The state treasurer shall direct the investment of the
25 fund. Interest and earnings of the fund shall be credited to the
26 fund. Money in the fund at the close of the fiscal year shall
27 remain in the fund and shall not revert to the general fund.

1 (2) Money in the fund shall be used only by the department
2 to enforce this part and the rules promulgated under this part
3 and the rules promulgated under the fire prevention code, Act
4 No. 207 of the Public Acts of 1941, being sections 29.1 to 29.33
5 of the Michigan Compiled Laws, pertaining to the delivery and
6 dispensing operations of regulated substances.

7 (3) Notwithstanding section 4702(8), if at the close of any
8 fiscal year the amount of money in the fund exceeds
9 \$8,000,000.00, the department shall not collect a registration
10 fee for the following year from existing underground storage tank
11 systems. After the registration fee has been suspended under
12 this subsection, it shall only be reinstated if, at the close of
13 any succeeding fiscal year, the amount of money in the fund is
14 less than \$2,000,000.00.

15 (4) The department of treasury shall, before November 1 of
16 each year, notify the department of the balance in the fund at
17 the close of the preceding fiscal year.

18 Sec. 4705. The department shall collect and evaluate the
19 information obtained through the registration of underground
20 storage tanks required by section 4702.

21 Sec. 4706. The board shall promulgate rules relating to
22 underground storage tank systems that are at least as stringent
23 as the rules promulgated by the United States environmental pro-
24 tection agency under subtitle I of the solid waste disposal act,
25 title II of Public Law 89-272, 42 U.S.C. 6991 to 6991i. These
26 rules shall include a requirement that the owner or operator of
27 an underground storage tank system provide financial

1 responsibility in the event of a release from the underground
2 storage tank system.

3 Sec. 4707. (1) The department shall enforce this part and
4 the rules promulgated under this part.

5 (2) The department may delegate the authority to enforce
6 this part and the rules promulgated under this part to a local
7 unit of government that has sufficient employees who are certi-
8 fied by the department under subsection (3) as underground stor-
9 age tank system inspectors. A local unit of government may apply
10 for delegation under this section by submitting a resolution of
11 the governing body of the local unit of government and an appli-
12 cation containing the information required by the department.
13 The department may revoke a delegation under this section for a
14 violation of this part, the rules promulgated under this part, or
15 a contract entered between the department and the local unit of
16 government.

17 (3) The department may certify individuals who are qualified
18 to enforce this part and the rules promulgated under this part as
19 underground storage tank system inspectors. The department may
20 revoke an individual's certification under this section for vio-
21 lating this part or rules promulgated under this part.

22 (4) If the department elects to delegate enforcement author-
23 ity under subsection (2), the board shall promulgate rules that
24 do both of the following:

25 (a) Establish criteria for delegation under subsection (2).

1 (b) Establish qualifications for certification of
2 individuals as underground storage tank system inspectors under
3 subsection (3).

4 (5) The department may contract with a local unit of govern-
5 ment for the purpose of enforcing this part and the rules promul-
6 gated under this part.

7 Sec. 4708. (1) The department may, upon resolution of the
8 governing body of a local unit of government in whose jurisdic-
9 tion an underground storage tank system is being installed,
10 require additional safeguards, other than those specified in
11 rules, when the public health, safety, welfare, or the environ-
12 ment is endangered.

13 (2) A local unit of government shall not enact or enforce a
14 provision of an ordinance that is inconsistent with this part or
15 rules promulgated under this part.

16 (3) A local unit of government shall not enact or enforce a
17 provision of an ordinance that requires a permit, license,
18 approval, inspection, or the payment of a fee or tax for the
19 installation, use, closure, or removal of an underground storage
20 tank system.

21 Sec. 4709. (1) A person shall not knowingly deliver a regu-
22 lated substance into an underground storage tank system that is
23 not registered under this part.

24 (2) A person shall not repair or test an underground storage
25 tank system that is not registered under this part.

1 Sec. 4710. The following are deferred from regulation under
2 this part until the director determines that they should be
3 regulated:

4 (a) Wastewater treatment tank systems.

5 (b) An underground storage tank system containing radioac-
6 tive material that is regulated under the atomic energy act of
7 1954, chapter 1073, 68 Stat. 919.

8 (c) An underground storage tank system that is part of an
9 emergency generator system at nuclear power generation facilities
10 regulated by the nuclear regulatory commission under appendix A
11 to 10 C.F.R. part 50.

12 (d) Airport hydrant fuel distribution systems.

13 (e) Underground storage tank systems with field-constructed
14 tanks.

15 Sec. 4711. (1) A person who violates this part or a rule
16 promulgated under this part or who knowingly submits false infor-
17 mation when registering an underground storage tank system under
18 this part is guilty of a misdemeanor, punishable by imprisonment
19 for not more than 6 months, or a fine of not more than \$500.00,
20 or both.

21 (2) A person who violates this part or a rule promulgated
22 under this part or who knowingly submits false information when
23 registering an underground storage tank system under this part is
24 subject to a civil fine of not more than \$5,000.00 for each
25 underground storage tank system for each day of violation. A
26 civil fine imposed under this subsection shall be based upon the
27 seriousness of the violation and any good faith efforts by the

1 violator to comply with this part and the rules promulgated under
2 this part.

3 (3) A civil fine collected under subsection (2) shall be
4 deposited into the fund.

5 Sec. 4712. This part is repealed upon the expiration of 12
6 months after part 51 becomes invalid pursuant to section
7 5123(3).

8 PART 49

9 LEAKING UNDERGROUND STORAGE TANKS

10 Sec. 4901. The words and phrases defined in sections 4902
11 and 4903 shall have the meanings ascribed to them in those
12 sections.

13 Sec. 4902. (1) "Corrective action" means an action to stop,
14 minimize, eliminate, or clean up a release or its effects, as may
15 be necessary to protect the public health, safety, welfare, or
16 the environment. Corrective action includes, but is not limited
17 to, release investigation, mitigation of fire and safety hazards,
18 tank repair or removal, soil remediation, hydrogeological inves-
19 tigations, free product removal, groundwater remediation and mon-
20 itoring, exposure assessments, the temporary or permanent reloca-
21 tion of residents, and the provision of alternate water
22 supplies.

23 (2) "Department" means the department of natural resources,
24 its employees, agents, or contractors.

25 (3) "Director" means the director of the department or his
26 or her designee.

1 (4) "Free product" means a regulated substance in a liquid
2 phase that is not dissolved in water, that has been released into
3 the environment.

4 (5) "Local unit of government" means a city, village, town-
5 ship, county, fire department, or local health department as
6 defined in section 1105 of the public health code, Act No. 368 of
7 the Public Acts of 1978, being section 333.1105 of the Michigan
8 Compiled Laws.

9 Sec. 4903. (1) "Operator" means a person who is presently,
10 or was at the time of a release, in control of, or responsible
11 for, the operation of an underground storage tank system.

12 (2) "Owner" means a person who holds, or at the time of a
13 release held, a legal, equitable, or possessory interest of any
14 kind in an underground storage tank system, or in the property on
15 which an underground storage tank system is located, including,
16 but not limited to, a trust, vendor, vendee, lessor, or lessee.
17 However, owner does not include a person or a regulated financial
18 institution who, without participating in the management of an
19 underground storage tank system and who is not otherwise engaged
20 in petroleum production, refining, or marketing relating to the
21 underground storage tank system, is acting in a fiduciary capac-
22 ity or who holds indicia of ownership primarily to protect the
23 person's or the regulated financial institution's security inter-
24 est in the underground storage tank system or the property on
25 which it is located. This exclusion does not apply to a grantor,
26 beneficiary, remainderman, or other person who could directly or
27 indirectly benefit financially from the exclusion other than by

1 the receipt of payment for fees and expenses related to the
2 administration of a trust.

3 (3) "Release" means any spilling, leaking, emitting, dis-
4 charging, escaping, leaching, or disposing from an underground
5 storage tank system into groundwater, surface water, or subsur-
6 face soils.

7 (4) "Regulated substance" means either of the following:

8 (a) A substance defined in section 101(14) of title I of the
9 comprehensive environmental response, compensation, and liability
10 act of 1980, Public Law 96-510, 42 U.S.C. 9601, but not including
11 a substance regulated as a hazardous waste under subtitle C of
12 the solid waste disposal act, title II of Public Law 89-272, 42
13 U.S.C. 6921 to 6931 and 6933 to 6939b.

14 (b) Petroleum, including crude oil or any fraction of crude
15 oil that is liquid at standard conditions of temperature and
16 pressure (60 degrees Fahrenheit and 14.7 pounds per square inch
17 absolute). Petroleum includes but is not limited to mixtures of
18 petroleum with de minimis quantities of other regulated sub-
19 stances, and petroleum-based substances comprised of a complex
20 blend of hydrocarbons derived from crude oil through processes of
21 separation, conversion, upgrading, or finishing such as motor
22 fuels, jet fuels, distillate fuel oils, residual fuel oils,
23 lubricants, and petroleum solvents.

24 (5) "Underground storage tank system" means a tank or combi-
25 nation of tanks, including underground pipes connected to the
26 tank or tanks, which is, was, or may have been, used to contain
27 an accumulation of regulated substances, and the volume of which,

1 including the volume of the underground pipes connected to the
2 tank or tanks, is 10% or more beneath the surface of the ground.
3 An underground storage tank system does not include any of the
4 following:

5 (a) A farm or residential tank of 1,100 gallons or less
6 capacity used for storing motor fuel for noncommercial purposes.

7 (b) A tank used for storing heating oil for consumptive use
8 on the premises where the tank is located.

9 (c) A septic tank.

10 (d) A pipeline facility, including gathering lines regulated
11 under either of the following:

12 (i) The natural gas pipeline safety act of 1968, Public Law
13 90-481, 49 U.S.C. Appx 1671 to 1677, 1679a to 1682, and 1683 to
14 1687.

15 (ii) Sections 201 to 215, 217, and 219 of the hazardous
16 liquid pipeline safety act of 1979, title II of Public Law
17 96-129, 49 U.S.C. Appx 2001 to 2015.

18 (e) A surface impoundment, pit, pond, or lagoon.

19 (f) A storm water or wastewater collection system.

20 (g) A flow-through process tank.

21 (h) A liquid trap or associated gathering lines directly
22 related to oil or gas production and gathering operations.

23 (i) A storage tank situated in an underground area, such as
24 a basement, cellar, mineworking, drift, shaft, or tunnel if the
25 storage tank is situated upon or above the surface of the floor.

26 (j) Any pipes connected to a tank that is described in
27 subdivisions (a) to (i).

1 - (k) An underground storage tank system holding hazardous
2 wastes listed or identified under subtitle C of the solid waste
3 disposal act, or a mixture of such hazardous waste and other reg-
4 ulated substances.

5 (l) A wastewater treatment tank system that is part of a
6 wastewater treatment facility regulated under section 307(b) of
7 title III of the federal water pollution control act,
8 chapter 758, 86 Stat. 856, 33 U.S.C. 1317, or section 402 of
9 title IV of the federal water pollution control act, chapter 758,
10 86 Stat. 880, 33 U.S.C. 1342.

11 (m) Equipment or machinery that contains regulated sub-
12 stances for operational purposes such as hydraulic lift tanks and
13 electrical equipment tanks.

14 (n) An underground storage tank system with a capacity of
15 110 gallons or less.

16 (o) An underground storage tank system that contains a de
17 minimis concentration of regulated substances.

18 (p) An emergency spill or overflow containment underground
19 storage tank system that is expeditiously emptied after use.

20 Sec. 4904. The department of state police, fire marshal
21 division shall promulgate rules that provide for reporting of
22 suspected releases from underground storage tank systems and con-
23 firmation of releases from underground storage tank systems.

24 Sec. 4905. (1) Upon confirmation of a release or the dis-
25 covery of a release in any other manner from an underground stor-
26 age tank system, the owner or operator shall perform all of the
27 following initial response actions within 24 hours:

1 (a) Identify and mitigate fire, explosion, and vapor
2 hazards.

3 (b) Take immediate action to prevent further release of the
4 regulated substance into the environment.

5 (c) Report the release to the department of state police,
6 fire marshal division within 24 hours after confirmation.

7 (2) Upon learning of a confirmed release, the department of
8 state police, fire marshal division shall immediately notify the
9 department.

10 Sec. 4906. (1) Upon confirmation of a release, unless
11 directed to do otherwise by the director, the owner or operator
12 shall promptly perform all of the following abatement measures:

13 (a) Remove as much of the regulated substance from the
14 underground storage tank system as is necessary to prevent fur-
15 ther release to the environment.

16 (b) Visually inspect any aboveground releases or exposed
17 below-ground releases and prevent further migration of the
18 released substance into surrounding soils, groundwater, and sur-
19 face water.

20 (c) Continue to monitor and mitigate any additional fire and
21 safety hazards posed by vapors or free product that have migrated
22 from the underground storage tank system excavation zone and
23 entered into subsurface structures.

24 (d) Remove and dispose, or properly remediate, contaminated
25 soil. The director shall be given reasonable notice and opportu-
26 nity to monitor these activities.

1 (e) Measure for the presence of a release where
2 contamination is most likely to be present at the underground
3 storage tank system site. In selecting sample types, sample
4 locations, and measurement methods, the owner and operator shall
5 consider the nature of the stored substance, the type of back-
6 fill, the depth to groundwater, and other factors as appropriate
7 for identifying the presence and source of the release.

8 (f) Investigate to determine the possible presence of free
9 product and begin free product removal as soon as practicable.

10 (2) Within 20 days after confirmation of a release or within
11 another reasonable period of time determined by the director, the
12 owner or operator shall submit a report to the director summariz-
13 ing the initial abatement steps taken under subsection (1) and
14 any resulting information or data.

15 (3) Following confirmation of a release, unless directed to
16 do otherwise by the director, the owner or operator shall assem-
17 ble information about the site and the nature of the release,
18 including information gained while confirming the release or com-
19 pleting the initial abatement measures in subsection (1). This
20 information shall include, but is not limited to, the following:

21 (a) Data on the nature and estimated quantity of the
22 release.

23 (b) Data from available sources and site investigations con-
24 cerning the following factors: surrounding populations, water
25 quality, use and approximate locations of wells potentially
26 affected by the release, subsurface soil conditions, locations of
27 subsurface sewers, climatological conditions, and land use.

1 (c) Results of the site characterization required by
2 subsection (1).

3 (d) Results of the free product investigations required by
4 subsection (1).

5 (4) Within 45 days after confirmation of a release or
6 another reasonable period of time determined by the director, the
7 owner or operator shall submit the information collected in com-
8 pliance with subsection (3) to the director in a manner that
9 demonstrates its applicability and technical adequacy.

10 (5) Following confirmation of a release, at a site where an
11 investigation indicates presence of free product, the owner or
12 operator shall promptly remove free product to the maximum extent
13 practicable as determined by the director while continuing, as
14 necessary, any actions initiated under subsection (1), or prepar-
15 ing for further actions required under this section. In meeting
16 the requirements of this section, owners and operators shall do
17 all of the following:

18 (a) Conduct free product removal in a manner that minimizes
19 the spread of contamination into previously uncontaminated zones
20 by using recovery and disposal techniques appropriate to the
21 hydrogeologic conditions at the site, and that properly treats,
22 discharges, or disposes of recovery by-products as required by
23 law.

24 (b) Use abatement of free product migration as a minimum
25 objective for the design of the free product removal system.

26 (c) Handle any flammable products in a safe and competent
27 manner to prevent fires or explosions.

1 (d) Unless directed to do otherwise by the director, prepare
2 and submit to the director, within 45 days after confirming a
3 release, a free product removal report that provides at least all
4 of the following information:

5 (i) The name of the person or persons responsible for imple-
6 menting the free product removal measures.

7 (ii) The estimated quantity, type, and thickness of free
8 product observed or measured in wells, boreholes, and
9 excavations.

10 (iii) The type of free product recovery system used.

11 (iv) Whether any discharge will take place on-site or
12 off-site during the recovery operation and where this discharge
13 will be located.

14 (v) The type of treatment applied to, and the effluent qual-
15 ity expected from, any discharge.

16 (vi) The steps that have been or are being taken to obtain
17 necessary permits for any discharge.

18 (vii) The disposition of the recovered free product.

19 (6) Within 45 days after confirmation of a release, in order
20 to determine the full extent and location of soils, groundwater,
21 and surface water contaminated by the release, and also to deter-
22 mine the presence and concentrations of the regulated substance
23 that has contaminated the groundwater, surface water, and soils,
24 the owner or operator shall submit a work plan to conduct an
25 investigation to the director for his or her review and
26 approval.

1 (7) The director shall approve or disapprove the work plan
2 submitted under subsection (6) within 30 days. Upon approval by
3 the director of the work plan, the owner or operator shall con-
4 duct the investigation and submit the results in accordance with
5 the schedule established in the approved work plan.

6 Sec. 4907. (1) At any point after reviewing the information
7 submitted in compliance with section 4906, the director may
8 require the owner or operator to submit additional information or
9 to develop and submit a corrective action plan for responding to
10 contaminated soils, groundwater, and surface water. If a plan is
11 required, the owner or operator shall submit the plan according
12 to a schedule established by the director. Alternatively, the
13 owner or operator may, after fulfilling the requirements of
14 section 4906, choose to submit a corrective action plan for
15 responding to contaminated soil, groundwater, and surface water.
16 In either case, the owner or operator is responsible for submit-
17 ting a plan that provides for adequate protection of human health
18 and the environment as determined by the director, and shall
19 modify his or her plan as necessary to meet this standard.

20 (2) The director shall approve the corrective action plan
21 only after ensuring that implementation of the plan will ade-
22 quately protect human health, safety, and the environment.

23 (3) The director shall approve or disapprove the corrective
24 action plan within 45 days after it has been received. If the
25 director disapproves the corrective action plan, he or she shall
26 provide the owner or operator with a list of deficiencies, and
27 recommendations that if incorporated would result in the plan's

1 approval, along with a schedule for resubmittal. The owner or
2 operator shall submit an amended corrective action plan according
3 to the schedule specified by the director.

4 (4) Upon approval of the corrective action plan or as
5 directed by the director, the owner or operator shall implement
6 the plan, including modifications to the plan required by the
7 director. The owner or operator shall monitor, evaluate, and
8 report the results of implementing the plan in accordance with a
9 schedule established by the director.

10 (5) The owner or operator may, in the interest of minimizing
11 environmental contamination and promoting more effective cleanup,
12 begin cleanup of soil and groundwater before the corrective
13 action plan is approved, if he or she does all of the following:

14 (a) Notify the director of his or her intention to begin
15 cleanup.

16 (b) Comply with any conditions imposed by the director,
17 including halting cleanup or mitigating adverse consequences from
18 cleanup activities.

19 (c) Incorporate these self-initiated cleanup measures in the
20 corrective action plan that is submitted to the director for
21 approval.

22 (6) After the director approves a corrective action plan
23 under this section, and the owner or operator has completed in
24 full all corrective actions required in the plan, and is in com-
25 pliance with this part, the director shall execute a document
26 stating that the corrective actions have been completed. If an
27 owner or operator delivers to the director a written statement

1 asserting that all corrective actions have been completed and
2 includes with this statement documentation sufficient to show
3 full compliance with the approved corrective action plan and this
4 part, the director shall respond within 60 days of receipt of
5 that statement by either executing a document stating that the
6 corrective actions have been completed or by executing a document
7 indicating what corrective actions remain to be completed.
8 Failure to respond shall be considered as if it were a response
9 that corrective action remains to be completed, and the owner or
10 operator may request a hearing before the commission in the same
11 manner as provided in section 4909.

12 (7) The director may issue corrective action orders pursuant
13 to section 4909 to the owner or operator as necessary to carry
14 out the purposes of this part.

15 Sec. 4908. (1) For each confirmed release that requires a
16 corrective action plan under section 4907, the director shall
17 provide notice to the public by means designed to reach those
18 members of the public directly affected by the release and the
19 planned corrective action as determined appropriate by the
20 director. The director shall ensure that site release informa-
21 tion and the corrective action plan are made available to the
22 public for inspection upon request.

23 (2) If implementation of an approved corrective action plan
24 does not achieve the established cleanup levels in the plan and
25 termination of that plan is under consideration by the director,
26 the director shall give public notice that complies with
27 subsection (1).

1 Sec. 4909. (1) The director may issue a corrective action
2 order requiring compliance with this part. A corrective action
3 order issued under this section shall state with reasonable spec-
4 ificity the basis for issuance of the order, and specify a rea-
5 sonable time for compliance.

6 (2) Within 14 days after issuance of a corrective action
7 order, the owner or operator may do either of the following:

8 (a) Consent in writing to the corrective action order.

9 (b) Request an opportunity for hearing before the
10 commission.

11 (3) A hearing requested under subsection (2)(b) shall be
12 held at the next regular meeting of the commission which is
13 scheduled at least 10 days after issuance of the order. At the
14 hearing, the commission may do any of the following:

15 (a) Make a final decision with respect to the order.

16 (b) Refer the matter to a hearings officer for contested
17 case proceedings pursuant to the administrative procedures act of
18 1969, Act No. 306 of the Public Acts of 1969, being sections
19 24.201 to 24.328 of the Michigan Compiled Laws.

20 (c) Take other actions as may be necessary to protect the
21 public health, safety, welfare, or the environment.

22 (4) If the commission has not taken 1 of the actions pro-
23 vided in subsection (3) within 30 days after a request made pur-
24 suant to subsection (2), then the owner or operator may request a
25 contested case hearing pursuant to Act No. 306 of the Public Acts
26 of 1969.

1 (5) A final decision in an administrative proceeding
2 pursuant to subsection (3) or (4) may be reviewed by a circuit
3 court for the county of Ingham or the county where the release
4 occurred or where the owner or operator resides.

5 (6) The pendency of any administrative or judicial proceed-
6 ing on a corrective action order does not preclude the director
7 from taking corrective action pursuant to section 4910.

8 Sec. 4910. If the director learns of a suspected or con-
9 firmed release from an underground storage tank system, the
10 director may undertake corrective actions necessary to protect
11 the public health, safety, welfare, or the environment.

12 Sec. 4911. (1) Except as otherwise provided in this sec-
13 tion, liability imposed upon an owner or operator under this part
14 is strict and without regard to fault, as applied to either or
15 both of the following:

16 (a) The obligation to carry out all corrective action
17 requirements pursuant to this part.

18 (b) Any liability for other relief provided in section
19 4912(1).

20 (2) An owner or operator is not liable under this part if
21 any of the following occur:

22 (a) The owner or operator proves that the release was caused
23 solely by any of the following:

24 (i) An act of God.

25 (ii) An act of war.

26 (iii) An act or omission of a third party without regard to
27 whether the act or omission was or was not negligent.

1 (iv) Any combination of subparagraphs (i) to (iii).

2 (b) The owner would otherwise be liable solely as the owner
3 of the real property on which the underground tank system is or
4 was located, the owner acquired that property after the release
5 of a regulated substance, and the owner can establish 1 or more
6 of the circumstances described in the following subparagraphs by
7 a preponderance of the evidence:

8 (i) At the time the owner acquired the property, the owner
9 did not know and had no reason to know that any release of a reg-
10 ulated substance had occurred on, in, or at the property.

11 (ii) The owner is a government entity that acquired the
12 property through an involuntary transfer or acquisition.

13 (iii) The owner acquired the property by inheritance or
14 devise.

15 (iv) The owner is a government entity that acquired the
16 property from the state by statutory transfer pursuant to Act
17 No. 73 of the Public Acts of 1970, being sections 259.801 to
18 259.823 of the Michigan Compiled Laws.

19 (3) To establish that the owner had no reason to know, as
20 provided in subsection (2)(b)(i), the owner must have undertaken,
21 at the time of acquisition, all appropriate inquiry into the pre-
22 vious ownership and uses of the property consistent with good
23 commercial or customary practice in an effort to minimize
24 liability. For purposes of the preceding sentence, the court
25 shall take into account any specialized knowledge or experience
26 on the part of the owner, the relationship of the purchase price
27 to the value of the property if uncontaminated, commonly known or

1 reasonably ascertainable information about the property, the
2 obviousness of the presence or likely presence of contamination
3 at the property, and the ability to detect the contamination by
4 appropriate investigation.

5 (4) Notwithstanding subsection (2), if the owner obtained
6 actual knowledge of the release of a regulated substance at the
7 property when the owner owned the property and then subsequently
8 transferred ownership of the property to another person without
9 disclosing this knowledge, the owner shall be treated as liable
10 under this part and a defense under subsection (2)(b) is not
11 available to the owner.

12 (5) This section does not affect the liability under this
13 part of a person who, by any act or omission, caused or contrib-
14 uted to the release of a regulated substance that is the subject
15 of the action relating to the property.

16 (6) An indemnification, hold harmless, or similar agreement
17 or conveyance is not effective to transfer from the owner or
18 operator or from any person who may be liable for a release or
19 threat of release under this part, to any other person the
20 liability imposed under this part. This subsection does not bar
21 any agreement to insure, hold harmless, or indemnify a party to
22 the agreement for any liability under this part.

23 (7) A cause of action that an owner or operator or any other
24 person subject to liability under this part, or a guarantor, has
25 or would have by reason of subrogation or otherwise against any
26 person is not barred by this part.

1 (8) The owner or operator, or both, is liable to the state
2 for costs that are incurred by the state for taking corrective
3 action or enforcement action pursuant to this part.

4 (9) Unpaid costs incurred by the state for taking corrective
5 action constitutes a lien in favor of the state against the land
6 on which the underground storage tank system is located and the
7 tank system itself and shall have priority over all other liens
8 and encumbrances except such liens and encumbrances recorded
9 before the date the lien under this part is recorded. This lien
10 arises when the agency first incurs costs for taking corrective
11 action.

12 (10) The lien provided in subsection (9) is perfected
13 against real property when a notice of lien is recorded with the
14 register of deeds in the county in which real property is
15 located. Subject to subsection (9), recording of the notice of
16 lien relates back to the date on which the lien arose and per-
17 fects the lien as of that date. The recording of the notice of
18 lien relates only to those unpaid costs arising during the 12
19 months immediately preceding the recording date, unless this pro-
20 vision is specifically waived, in writing, by the owner as part
21 of an approved corrective action plan.

22 Sec. 4912. (1) The attorney general may, on behalf of the
23 director, commence a civil action seeking any of the following:

24 (a) A temporary or permanent injunction.

25 (b) Recovery of all costs incurred by the state for taking
26 corrective action.

1 (c) Damages for the full injury done to the natural
2 resources of this state along with enforcement and litigation
3 costs incurred by the state.

4 (d) A civil fine of not more than \$10,000.00 for each under-
5 ground storage tank system for each day of noncompliance with a
6 requirement of this part, or a rule promulgated pursuant to
7 section 4914. A fine imposed under this subdivision shall be
8 based upon the seriousness of the violation and any good faith
9 efforts by the violator to comply with this part or a rule
10 promulgated under this part.

11 (e) A civil fine of not more than \$25,000.00 for each day of
12 noncompliance with a corrective action order issued pursuant to
13 this part. A fine imposed under this subdivision shall be based
14 upon the seriousness of the violation and any good faith efforts
15 by the violator to comply with the corrective action order.

16 (f) Recovery of funds provided to the state from the United
17 States environmental protection agency's leaking underground
18 storage tank trust fund.

19 (2) A civil action brought under subsection (1) may be
20 brought in the circuit court for the county of Ingham, in the
21 county where the release occurred, or in the county where the
22 defendant resides.

23 (3) The state may, when appropriate, return to the United
24 States environmental protection agency any federal funds recov-
25 ered under this part. The state may also retain any federal
26 funds recovered under this part in a separate account for use in

1 implementing this part with the use of those funds subject to
2 approval of the United States environmental protection agency.

3 Sec. 4913. (1) Upon request of the director for the purpose
4 of developing or assisting in the development of a rule, conduct-
5 ing an investigation, taking corrective action, or enforcing this
6 part the owner or operator shall furnish the director with all
7 information about all of the following:

8 (a) The underground storage tank system and its associated
9 equipment.

10 (b) The past or present contents of the underground storage
11 tank system.

12 (c) Any releases and investigations of releases.

13 (2) The department has the right to enter at all reasonable
14 times in or upon any private or public property for any of the
15 following purposes:

16 (a) Inspecting an underground storage tank system.

17 (b) Obtaining samples of any substance from an underground
18 storage tank system.

19 (c) Requiring and supervising the conduct of monitoring or
20 testing of an underground storage tank system, its associated
21 equipment, or contents.

22 (d) Conducting monitoring or testing of an underground stor-
23 age tank system if there is no identified responsible party.

24 (e) Conducting monitoring or testing, or taking samples of
25 soils, air, surface water, or groundwater.

26 (f) Taking corrective action.

1 (3) All inspections and investigations undertaken by the
2 department under this section shall be commenced and completed
3 with reasonable promptness.

4 (4) The attorney general, on behalf of the director, may do
5 either of the following:

6 (a) Petition a court of appropriate jurisdiction for a war-
7 rant to authorize access to any private or public property to
8 carry out this part.

9 (b) Commence a civil action pursuant to section 4912 for an
10 order authorizing the department to enter any private or public
11 property as necessary to carry out this part.

12 Sec. 4914. The director may promulgate rules as are neces-
13 sary to implement this part.

14 Sec. 4915. The director may enter into an agreement with a
15 local unit of government, or a state or federal agency, to aid in
16 the implementation or enforcement of this part, and to obtain
17 financial assistance.

18 Sec. 4916. This part does not prohibit the department of
19 state police, state fire marshal division, from taking action in
20 any situation if it is otherwise authorized by law to act.

21 Sec. 4917. This part is repealed upon the expiration of 12
22 months after part 51 becomes invalid pursuant to section 5123(3)
23 of part 51.

24 PART 51

25 (UNDERGROUND STORAGE TANK FINANCIAL ASSURANCE)

26 Sec. 5101. The objectives of this part are to assist
27 persons in this state in meeting the financial responsibility

1 requirements provided for in subtitle I of the solid waste
2 disposal act, title II Public Law 89-272, 42 U.S.C. 6991 to
3 6991i, to address certain problems associated with releases from
4 petroleum underground storage tank systems, and to promote com-
5 pliance with parts 47 and 49.

6 Sec. 5102. For purposes of this part, the words and phrases
7 defined in sections 5103 and 5104 have the meanings ascribed to
8 them in those sections.

9 Sec. 5103. As used in this part:

10 (1) "Administrator" means the fund administrator provided
11 for in section 5112.

12 (2) "Bid" means a proposal signed by a contractor listed on
13 the approved contractor list provided for in section 5121 stat-
14 ing the name and address of the contractor, a specific itemized
15 list of the work proposed to be completed by the contractor, and
16 the itemized cost of the work proposed to be completed.

17 (3) "Board" means the Michigan underground storage tank
18 financial assurance policy board created in section 5120.

19 (4) "Corrective action" means an action to stop, minimize,
20 eliminate, or clean up a release or its effects, as may be neces-
21 sary to protect the public health, safety, welfare, or the
22 environment. Corrective action includes, but is not limited to,
23 release investigation, mitigation of fire and safety hazards,
24 tank repair or removal, soil remediation, hydrogeological inves-
25 tigations, free product removal, groundwater remediation and mon-
26 itoring, exposure assessments, the temporary or permanent
27 relocation of residents, and providing alternate water supplies.

1 (5) "Corrective action plan" means a corrective action plan
2 submitted under section 4907 of part 49.

3 (6) "Deductible" means the deductible provided for in
4 section 5113.

5 (7) "Department" means the department of management and
6 budget.

7 (8) "Financial responsibility requirements" means the finan-
8 cial responsibility for taking corrective action and for compen-
9 sating third parties for bodily injury and property damage caused
10 by a release from an underground storage tank system that the
11 owner or operator of an underground storage tank system is
12 required to demonstrate under subtitle I of the solid waste dis-
13 posal act, title II of Public Law 89-272, 42 U.S.C. 6991 to
14 6991i.

15 (9) "Fund" means the Michigan underground storage tank
16 financial assurance fund created in section 5105.

17 (10) "Heating oil" means petroleum that is No. 1, No. 2,
18 No. 4--light, No. 4--heavy, No. 5--light, No. 5--heavy, and No. 6
19 technical grades of fuel oil; other residual fuel oils including
20 navy special fuel oil and bunker C; and other fuels when used as
21 substitutes for 1 of these fuel oils.

22 (11) "Indemnification" means indemnification of a person for
23 a judgment entered against that person in a court of law or for a
24 settlement entered into by that person and approved by the attor-
25 ney general, if the judgment or settlement arises out of an
26 injury suffered because of a release from a petroleum underground
27 storage tank system operated by that person.

1 (12) "Location" means a facility or parcel of property where
2 petroleum underground storage tank systems are situated as iden-
3 tified by the underground storage tank notification filed pursu-
4 ant to part 47.

5 (13) "Occurrence" means an accident, including continuous or
6 repeated exposure to conditions, that results in a release from
7 an underground storage tank system.

8 (14) "Operator" means a person who is presently, or was at
9 the time of a release, in control of, or responsible for, the
10 operation of a petroleum underground storage tank system:

11 (15) "Owner" means a person who holds, or at the time of a
12 release held, a legal, equitable, or possessory interest of any
13 kind in an underground storage tank system, or in the property on
14 which an underground storage tank system is located, including,
15 but not limited to, a trust, vendor, vendee, lessor, or lessee.
16 However, owner does not include a person or a regulated financial
17 institution who, without participating in the management of an
18 underground storage tank system and who is not otherwise engaged
19 in petroleum production, refining, or marketing relating to the
20 underground storage tank system, is acting in a fiduciary capac-
21 ity or who holds indicia of ownership primarily to protect the
22 person's or the regulated financial institution's security inter-
23 est in the underground storage tank system or the property on
24 which it is located. This exclusion does not apply to a grantor,
25 beneficiary, remainderman, or other person who could directly or
26 indirectly benefit financially from the exclusion other than by

1 the receipt of payment for fees and expenses related to the
2 administration of a trust.

3 Sec. 5104. (1) "Petroleum" means crude oil, crude oil frac-
4 tions, and refined petroleum fractions including gasoline, kero-
5 sene, heating oils, and diesel fuels.

6 (2) "Petroleum underground storage tank system" means an
7 underground storage tank system used for the storage of
8 petroleum.

9 (3) "Refined petroleum" means aviation gasoline, middle dis-
10 tillates, jet fuel, kerosene, gasoline, and residual oils.

11 (4) "Regulatory fee" means the environmental protection
12 regulatory fee imposed under section 5107.

13 (5) "Release" means any spilling, leaking, emitting, dis-
14 charging, escaping, leaching, or disposing from a petroleum
15 underground storage tank system into groundwater, surface water,
16 or subsurface soils.

17 (6) "Underground storage tank system" means a tank or combi-
18 nation of tanks, including underground pipes connected to the
19 tank or tanks, which is or was used to contain an accumulation of
20 regulated substances, and is not currently being used for any
21 other purpose, and the volume of which, including the volume of
22 the underground pipes connected to the tank or tanks, is 10% or
23 more beneath the surface of the ground. An underground storage
24 tank system does not include any of the following:

25 (a) A farm or residential tank of 1,100 gallons or less
26 capacity used for storing motor fuel for noncommercial purposes.

1 (b) A tank used for storing heating oil for consumptive use
2 on the premises where the tank is located.

3 (c) A septic tank.

4 (d) A pipeline facility, including gathering lines regulated
5 under either of the following:

6 (i) The natural gas pipeline safety act of 1968, Public Law
7 90-481, 49 U.S.C. Appx 1671 to 1677, 1679a to 1682, and 1683 to
8 1687.

9 (ii) Sections 201 to 215, 217, and 219 of the hazardous
10 liquid pipeline safety act of 1979, title II of Public Law
11 96-129, 49 U.S.C. Appx 2001 to 2015.

12 (e) A surface impoundment, pit, pond, or lagoon.

13 (f) A storm water or wastewater collection system.

14 (g) A flow-through process tank.

15 (h) A liquid trap or associated gathering lines directly
16 related to oil or gas production and gathering operations.

17 (i) A storage tank situated in an underground area, such as
18 a basement, cellar, mineworking, drift, shaft, or tunnel if the
19 storage tank is situated upon or above the surface of the floor.

20 (j) Any pipes connected to a tank that is described in sub-
21 divisions (a) to (i).

22 (k) An underground storage tank system holding hazardous
23 wastes listed or identified under subtitle C of the solid waste
24 disposal act, title II of Public Law 89-272, 42 U.S.C. 6921 to
25 6931 and 6933 to 6939b, or a mixture of such hazardous waste and
26 other regulated substances.

1 (l) A wastewater treatment tank system that is part of a
2 wastewater treatment facility regulated under section 307(b) of
3 title III of the federal water pollution control act,
4 chapter 758, 86 Stat. 856, 33 U.S.C. 1317, or section 402 of
5 title IV of the federal water pollution control act, chapter 758,
6 86 Stat. 880, 33 U.S.C. 1342.

7 (m) Equipment or machinery that contains regulated sub-
8 stances for operational purposes such as hydraulic lift tanks and
9 electrical equipment tanks.

10 (n) An underground storage tank system with a capacity of
11 110 gallons or less.

12 (o) An underground storage tank system that contains a de
13 minimis concentration of regulated substances.

14 (p) An emergency spill or overflow containment underground
15 storage tank system that is expeditiously emptied after use.

16 (q) A wastewater treatment tank system.

17 (r) An underground storage tank system containing radioac-
18 tive material that is regulated under the atomic energy act of
19 1954, chapter 1073, 68 Stat. 919.

20 (s) An underground storage tank system that is part of an
21 emergency generator system at nuclear power generation facilities
22 regulated by the nuclear regulatory commission under appendix A
23 to 10 C.F.R. part 50.

24 (t) Airport hydrant fuel distribution systems.

25 (u) Underground storage tank systems with field-constructed
26 tanks.

1 (7) "Work invoice" means a receipt signed by a contractor
2 listed on the approved contractor list provided for in section
3 5121 stating the name and address of the contractor, a specific
4 itemized list of the work performed by the contractor, and an
5 itemized list of the cost of each of these items.

6 Sec. 5105. (1) The Michigan underground storage tank finan-
7 cial assurance fund is created.

8 (2) The state treasurer shall direct the investment of the
9 fund. Interest and earnings from fund investments shall be cred-
10 ited to the fund.

11 (3) Money in the fund at the close of the fiscal year shall
12 remain in the fund and shall not revert to the general fund.

13 (4) Money in the fund shall be expended only as follows and
14 in the following order of priority:

15 (a) For the reasonable administrative cost of implementing
16 this part by the department, the department of natural resources,
17 the department of state police, the department of treasury, and
18 the department of attorney general as annually appropriated by
19 the legislature. Administrative costs shall include the actual
20 and necessary expenses incurred by the board and its members in
21 carrying out the duties imposed by this part. Total administra-
22 tive costs expended under this subdivision shall not exceed 7% of
23 the fund's projected revenues in any year. By August 15, 1991,
24 the department shall conduct an audit of the actual administra-
25 tive costs of implementing this part and report the results of
26 this audit to the legislature.

1 (b) For the interest subsidy program established in section
2 5119. The money expended under this subdivision shall not exceed
3 10% of the fund's projected revenues in any year. However, 10%
4 of the revenue of the fund during the first year of the fund's
5 operation shall be expended on the interest subsidy program. If
6 this money is not expended during the first year, this money
7 shall be carried over for expenditure in the succeeding years of
8 the fund's operation. Additional fund revenue shall not be set
9 aside for the interest subsidy program until all of the first
10 year revenue is expended.

11 (c) For corrective action and indemnification including both
12 of the following:

13 (i) Payments for approved work invoices pursuant to this
14 part.

15 (ii) Payments for approved requests for indemnification pur-
16 suant to this part.

17 (5) The board shall make recommendations to the appropria-
18 tions committees in the senate and house of representatives on
19 the distribution and amount of administrative costs under subsec-
20 tion (4). The board shall provide a copy of these recommenda-
21 tions to each affected department.

22 Sec. 5106. (1) The emergency response fund is created in
23 the state treasury.

24 (2) The state treasurer shall direct the investment of the
25 emergency response fund. Interest and earnings of the emergency
26 response fund shall be credited to the emergency response fund.

1 (3) Money in the emergency response fund at the close of the
2 fiscal year shall remain in the emergency response fund and shall
3 not revert to the general fund.

4 (4) Except as provided in section 5127, money in the emer-
5 gency response fund shall not exceed \$1,000,000.00.

6 (5) Except as provided in section 5126, money in the emer-
7 gency response fund shall be expended by the director of the
8 department of natural resources to undertake corrective actions
9 pursuant to part 49.

10 (6) Not more than \$1,000,000.00 shall be expended from the
11 emergency response fund in any year.

12 (7) If money in the emergency response fund is expended
13 under subsection (5), the person or persons responsible for the
14 corrective action are liable to the state for all such
15 expenditures.

16 Sec. 5107. (1) An environmental protection regulatory fee
17 is imposed on all refined petroleum products sold for resale in
18 this state or consumption in this state. The regulatory fee
19 shall be used pursuant to section 5105(4) for the cleanup and
20 prevention of environmental contamination resulting from releases
21 of refined petroleum products from underground storage tank
22 systems. The regulatory fee shall be charged for capacity utili-
23 zation of underground storage tanks measured on a per gallon
24 basis. The regulatory fee shall be charged against all refined
25 petroleum products sold for resale in this state or consumption
26 in this state so as to not exclude any products that may be
27 stored in an underground tank at any point after the petroleum is

1 refined. The regulatory fee is 7/8 cent per gallon for each
2 gallon of refined petroleum sold for resale in this state or con-
3 sumption in this state, with the per gallon charge being a direct
4 measure of capacity utilization of an underground storage tank
5 system.

6 (2) The department of treasury shall precollect regulatory
7 fees from persons who refine petroleum in this state for resale
8 in this state or consumption in this state and persons who import
9 refined petroleum into this state for resale or consumption in
10 this state. The department of treasury shall collect regulatory
11 fees that can be collected at the same time as the sales tax
12 under section 6a of the general sales tax act, Act No. 167 of the
13 Public Acts of 1933, being section 205.56a of the Michigan
14 Compiled Laws, at that time. The remainder of the regulatory
15 fees shall be collected in the manner determined by the state
16 treasurer.

17 (3) A public utility with more than 500,000 customers in
18 this state is exempt from any fee or assessment imposed under
19 this part if that fee or assessment is imposed on petroleum used
20 by that public utility for the generation of steam or
21 electricity.

22 (4) All regulatory fees collected pursuant to this part
23 shall be deposited into the emergency response fund created in
24 section 5106 until the emergency response fund reaches
25 \$1,000,000.00. When the emergency response fund is at
26 \$1,000,000.00, all regulatory fees shall be deposited into the
27 fund.

1 (5) Beginning July 18, 1990 and every quarter thereafter,
2 the administrator shall determine if fund revenues are sufficient
3 to pay expected expenditures from the fund. If expected expendi-
4 tures are anticipated to exceed fund revenues, the state trea-
5 surer shall notify the advisory board and, with the advice of the
6 board, shall advise the legislature of the estimated increase in
7 the regulatory fee that is necessary to pay expected expenditures
8 or make other recommendations to revise this part that would
9 improve the security of the fund. If anticipated expenditures
10 are significantly below anticipated revenues, the state treasurer
11 shall notify the advisory board and, with the advice of the
12 board, shall recommend to the legislature a reduction of the
13 regulatory fee.

14 (6) If the state treasurer determines that fund revenues
15 will not be sufficient to pay expected expenditures from the
16 fund, the state treasurer shall notify the administrator, and 90
17 days after this notification has been given, the administrator
18 shall not accept any new bids, work invoices, or requests for
19 indemnification. Upon receiving this notification from the state
20 treasurer, the administrator shall notify, by certified mail, the
21 owners and operators of underground storage tank systems regis-
22 tered under part 47 that funding under this part will no longer
23 be available for new claims after the 90-day period has expired.
24 However, work invoices and requests for indemnification that were
25 submitted prior to or during this 90-day period may be paid to
26 the extent money is available in the fund as provided in this
27 part.

1 (7) The department of treasury may audit, enforce, collect,
2 and assess the fee imposed by this part in the same manner and
3 subject to the same requirements as revenues collected pursuant
4 to Act No. 122 of the Public Acts of 1941, being sections 205.1
5 to 205.31 of the Michigan Compiled Laws.

6 Sec. 5108. (1) Notwithstanding any other provision in this
7 part, regulatory fees shall be calculated and paid upon gross or
8 metered gallons with respect to all "light" petroleum products.
9 With respect only to "heavy" petroleum products (no. 4, no. 5,
10 no. 6 residual oils), regulatory fees shall be calculated and
11 paid upon net or temperature-corrected gallons.

12 (2) Notwithstanding any other provision in this part, if a
13 person receives refined petroleum products in this state for
14 resale in this state or consumption in this state pursuant to a
15 product exchange agreement, the department of treasury shall col-
16 lect the regulatory fees from that person.

17 (3) As used in this section, "product exchange agreement"
18 means an agreement between buyers and sellers of refined petro-
19 leum products in which refined petroleum products in bulk quan-
20 tity are made available to a person solely in consideration of
21 that person making available a like volume of refined petroleum
22 products to the other party at some other location.

23 Sec. 5109. (1) An owner or operator may receive money from
24 the fund for corrective action or indemnification only if all of
25 the following requirements are satisfied:

26 (a) The release from which the corrective action or
27 indemnification arose was discovered and reported on or after

1 July 18, 1989— However, money in the fund shall not be expended
2 until the fund begins operating pursuant to section 5112.

3 (b) The petroleum underground storage tank from which the
4 release occurred was, at the time of discovery of the release, in
5 compliance with the registration requirements of part 47.

6 (c) The owner or operator was at the time of discovery of
7 the release in compliance with all record-keeping and reporting
8 requirements of parts 47 and 49, the fire prevention code, Act
9 No. 207 of the Public Acts of 1941, being sections 29.1 to 29.33
10 of the Michigan Compiled Laws, rules promulgated under each of
11 these parts or acts, or subtitle I of the solid waste disposal
12 act, title II of Public Law 89-272, 42 U.S.C. 6991 to 6991i, or
13 rules promulgated under that act. Records kept under these parts
14 and acts shall be valid and verifiable.

15 (d) The owner or operator has provided the administrator
16 with proof of financial responsibility for the deductible amount
17 that will satisfy the requirements for financial responsibility
18 instruments under subtitle I of the solid waste disposal act.

19 (e) The owner or operator has not defaulted on a loan subsi-
20 dized through the interest subsidy program established in
21 section 5119.

22 (f) The owner or operator is not the United States
23 government.

24 (2) Either the owner or the operator may receive money from
25 the fund under this part for an occurrence, but not both.

26 (3) An owner or operator who is a public utility with more
27 than 500,000 customers in this state is ineligible to receive

1 money from the fund for corrective action or indemnification
2 associated with a release from a petroleum underground storage
3 tank system used to supply petroleum for the generation of steam
4 electricity.

5 (4) If an owner or operator receives money from the fund
6 under this part for an occurrence, the owner and operator are not
7 eligible to receive money from the fund for a subsequent occur-
8 rence unless the owner or operator has upgraded or replaced all
9 underground storage tank systems after the first occurrence at
10 the location of the occurrence so as to meet the requirements of
11 subtitle I of the solid waste disposal act, for a new underground
12 storage tank system installed after January 1, 1989 and the rules
13 promulgated under part 47.

14 Sec. 5110. The administrator shall approve expenditures for
15 corrective action and indemnification, on behalf of an owner or
16 operator, of not more than a total of \$1,000,000.00 of approved
17 work invoices, and approved requests for indemnification per
18 petroleum underground storage tank system per occurrence provided
19 that the owner or operator has met the requirements of this
20 part.

21 Sec. 5111. Notwithstanding any other provision of this
22 part, effective 3 years after the date the fund begins operating
23 as provided in section 5112, an owner or operator of a petroleum
24 underground storage tank system that has not met the standards
25 provided in subtitle I of the solid waste disposal act, title II
26 of Public Law 89-272, 42 U.S.C. 6991 to 6991i, and the rules
27 promulgated under part 47 for a new underground storage tank

1 system installed after January 1, 1989, and who has not submitted
2 a complete application and satisfied all other requirements of
3 the department for an interest subsidy under section 5119 on a
4 loan that would bring the petroleum underground storage tank
5 system into compliance with the standards provided in subtitle I
6 of the solid waste disposal act, and the rules promulgated under
7 part 47 for a new underground storage tank system installed after
8 January 1, 1989, is ineligible to receive money from the fund for
9 indemnification associated with a release from that petroleum
10 underground storage tank system.

11 Sec. 5112. The department shall employ a person to serve as
12 the fund administrator. The administrator shall be responsible
13 for processing requests for payments from the fund and approving
14 those requests as provided in this part. Beginning February 15,
15 1990, the fund shall begin operating and the administrator shall
16 begin to accept work invoices, bids, and requests for
17 indemnification. However, if the state treasurer determines that
18 there is sufficient money in the fund, the state treasurer may
19 establish an earlier date in which the fund may begin operating.

20 Sec. 5113. Prior to being eligible to receive money from
21 the fund in the event of an occurrence, the owner or operator is
22 responsible for the payment of the first \$10,000.00 of corrective
23 action or indemnification costs associated with the occurrence
24 per underground storage tank system per occurrence. This amount
25 may be referred to as the deductible amount.

26 Sec. 5114. If the department of natural resources approves
27 a corrective action plan under part 49, the department of natural

1 resources shall forward a copy of the corrective action plan to
2 the administrator.

3 Sec. 5115. (1) To access the fund for corrective action,
4 the owner or operator shall follow the procedures outlined in
5 this section. The owner or operator shall prepare a corrective
6 action plan pursuant to part 49. After preparing a corrective
7 action plan, the owner or operator may submit a bid to the
8 administrator.

9 (2) Upon receipt of a bid under subsection (1), the adminis-
10 trator shall make all of the following determinations:

11 (a) Whether the department of natural resources has deter-
12 mined that work performed or proposed to be performed is consis-
13 tent with the corrective action plan.

14 (b) Whether the cost of performing the work is reasonable.

15 (c) Whether the owner or operator is eligible to receive
16 funding under this part.

17 (3) If the administrator determines under subsection (2)
18 that the bid is both reasonable in terms of cost and consistent
19 with the corrective action plan and the owner or operator is eli-
20 gible for funding under this part, the administrator shall
21 approve the bid and notify the owner or operator who submitted
22 the bid of the approval. If the administrator determines that
23 the cost of the bid is not reasonable, that the work is not con-
24 sistent with the corrective action plan, or that the owner or
25 operator is not eligible for funding under this part, the admin-
26 istrator shall deny the bid and give notice of the denial to the
27 owner or operator who submitted the bid.

1 (4) The owner or operator may submit work invoices to the
2 administrator after approval of a bid under subsection (3). Upon
3 receipt of a work invoice, the administrator shall make the fol-
4 lowing determinations:

5 (a) Whether the work invoice is reasonable in terms of cost
6 and consistent with the approved bid.

7 (b) Whether the department of natural resources has deter-
8 mined that the work performed is consistent with the corrective
9 action plan.

10 (5) If the administrator determines that the work invoice
11 does not meet the requirements of subsection (4), he or she shall
12 deny the work invoice and give notice of the denial to the owner
13 or operator who submitted the work invoice.

14 (6) The administrator shall keep records of approved bids
15 and approved work invoices. If the owner or operator has submit-
16 ted approved work invoices totaling the deductible amount, then
17 the administrator shall forward approved work invoices to the
18 state treasurer, if the owner or operator has not exceeded the
19 allowable amount of expenditure provided in section 5110.

20 (7) The administrator may approve a reimbursement for a work
21 invoice that was paid by an owner or operator for corrective
22 action taken pursuant to part 49, if the corrective action meets
23 the requirements of part 49. Additionally, the receipt for the
24 payment shall meet the requirements of this part for an approved
25 bid and an approved work invoice.

1 (8) The department of natural resources shall determine
2 whether the work performed is consistent with the approved
3 corrective action plan.

4 (9) Except as provided in subsection (10), upon receipt of
5 an approved work invoice, the state treasurer shall make a pay-
6 ment to the contractor listed on the approved work invoice and
7 bid within 30 days if sufficient money exists in the fund.

8 (10) Upon direction of the administrator, the state trea-
9 surer may withhold partial payment of money on approved work
10 invoices to assure acceptable completion of the proposed work.

11 (11) Upon receipt of an approved work invoice, the state
12 treasurer shall make a payment to the owner or operator within
13 30 days if sufficient money exists in the fund.

14 Sec. 5116. (1) To access the fund for indemnification, the
15 owner or operator shall submit to the administrator a request for
16 indemnification containing the information required by the
17 administrator. If the owner or operator is eligible for funding
18 under this part, the administrator shall forward a copy of the
19 request for indemnification to the attorney general. The attor-
20 ney general shall approve the request for indemnification if
21 there is a legally enforceable judgment against the owner or
22 operator caused by a release or if a settlement with a third
23 party due to a release is reasonable. If a request for indemni-
24 fication is approved by the attorney general, the administrator
25 shall review whether the owner or operator has met the deductible
26 requirements as provided in this part, has not exceeded the
27 allowable amount of expenditure provided in section 5110, and is

1 eligible under section 5111. If, upon review, the owner or
2 operator is eligible to receive funding for the indemnification
3 under this part for the amount requested, the administrator shall
4 forward the approved request for indemnification to the depart-
5 ment of treasury.

6 (2) The administrator shall keep records of all approved
7 requests for indemnifications.

8 (3) The state treasurer shall make a payment to an owner or
9 operator for an approved indemnification request within 30 days
10 if sufficient money exists in the fund.

11 Sec. 5117. (1) The state treasurer shall pay approved work
12 invoices and approved requests for indemnification in the order
13 in which they are received. If there is insufficient money in
14 the fund to make a payment, then a payment shall not be made.
15 However, approved work invoices and approved requests for indem-
16 nification that are not funded may be paid if revenues of the
17 fund become available.

18 (2) Neither the fund nor the state are liable for approved
19 bids, approved work invoices, or approved requests for indemnifi-
20 cation if money in the fund is insufficient to meet these
21 claims.

22 Sec. 5118. (1) If the administrator denies a bid or work
23 invoice, or request for indemnification, the owner or operator
24 who submitted the claim may, within 14 days following the denial,
25 request review by the board. Upon review, if the board deter-
26 mines that the bid, work invoice, or request for indemnification
27 should be approved, the administrator shall approve it.

1 (2) A person who is denied approval by the board after
2 review under subsection (1) may request a contested case hearing
3 pursuant to the administrative procedures act of 1969, Act
4 No. 306 of the Public Acts of 1969, being sections 24.201 to
5 24.328 of the Michigan Compiled Laws.

6 Sec. 5119. (1) The department of treasury in cooperation
7 with the board shall establish an interest subsidy program
8 through rules. This program shall provide for interest subsi-
9 dies, upon application, to the owner or operator of a petroleum
10 underground storage tank system who meets the applicable require-
11 ments of section 5109(1). Money in the fund shall not be used
12 for loans but shall be used to provide interest subsidies to len-
13 ders on loans for the replacement of a petroleum underground
14 storage tank system.

15 (2) Interest subsidies shall be made under this section,
16 upon application, for the replacement of existing petroleum
17 underground storage tank systems with petroleum underground stor-
18 age tank systems that meet the requirements of subtitle I of the
19 solid waste disposal act, title II of Public Law 89-272, 42
20 U.S.C. 6991 to 6991i, for new underground storage tank systems
21 installed after January 1, 1989 and the rules promulgated under
22 part 47.

23 (3) The interest subsidy provided in this section shall be
24 valid for the entire loan period.

25 (4) Applications for the interest subsidy program under this
26 section shall be submitted by July 18, 1991.

1 Sec. 5120. (1) The Michigan underground storage tank
2 financial assurance policy board is created in the department.

3 (2) The board shall consist of the following:

4 (a) The director of the department, or his or her designee.

5 (b) The director of the department of natural resources, or
6 his or her designee.

7 (c) The director of the department of state police, or his
8 or her designee.

9 (d) The state treasurer, or his or her designee.

10 (e) Seven individuals appointed by the governor with the
11 advice and consent of the senate as follows:

12 (i) One individual representing an independent petroleum
13 wholesale distributor-marketer trade association.

14 (ii) One individual representing a petroleum
15 refiner-supplier trade association.

16 (iii) One individual representing a service station dealers'
17 trade association.

18 (iv) One individual representing a truck stop operators
19 trade association.

20 (v) One individual representing an environmental public
21 interest organization.

22 (vi) One individual representing the general public.

23 (vii) One individual representing local government.

24 (3) An individual appointed to the board shall serve for a
25 term of 2 years.

26 (4) A vacancy on the board shall be filled in the same
27 manner as the original appointment.

1 (5) The first meeting of the board shall be called by the
2 director of the department of management and budget. At its
3 first meeting, the board shall elect from among its members a
4 chairperson and other officers as it considers necessary. After
5 the first meeting, a meeting of the board shall be called by the
6 chairperson on his or her own initiative or by the chairperson on
7 petition of 3 or more members. Upon receipt of a petition of 3
8 or more members, a meeting shall be called for a date no later
9 than 14 days after the date of receipt of the petition.

10 (6) The business which the board may perform shall be con-
11 ducted at a public meeting of the board held in compliance with
12 the open meetings act, Act No. 267 of the Public Acts of 1976,
13 being sections 15.261 to 15.275 of the Michigan Compiled Laws.

14 (7) A majority of the members of the board constitutes a
15 quorum for the transaction of business at a meeting of the
16 board. Action by the board shall be by a majority of the votes
17 cast.

18 (8) The board shall advise the department and the adminis-
19 trator on all matters related to the implementation of this
20 part.

21 Sec. 5121. The department of natural resources, after con-
22 sultation with the board, shall prepare and annually update a
23 list of approved contractors who, based on department of natural
24 resources guidelines, are qualified to undertake corrective
25 actions. However, in preparing this list of approved contrac-
26 tors, the department of natural resources is not responsible or
27 liable for the performance of the contractors. The department of

1 natural resources shall make this list of approved contractors
2 available to a person upon request. A contractor shall be sus-
3 pended or removed from the list for fraud or other cause as
4 determined by the department.

5 Sec. 5122. The department and the department of treasury
6 may promulgate rules necessary to implement this part.

7 Sec. 5123. (1) This part does not create any liability on
8 behalf of the state. This part does not make the state the guar-
9 antor of the fund.

10 (2) This part does not relieve any person who may be eligi-
11 ble to receive money from the fund or the emergency response fund
12 from any liability that he or she may incur as the owner or oper-
13 ator of an underground storage tank system. The state is not
14 assuming the liability of an owner or operator eligible for fund-
15 ing under this part, it is only providing assistance to such
16 owners or operators in meeting the financial responsibility
17 requirements.

18 (3) If any provision of this part is found to be unconstitu-
19 tional by a court of competent jurisdiction and the allowable
20 time for filing an appeal has expired or the appellant has
21 exhausted all of his or her avenues of appeal, this whole act is
22 unconstitutional and invalid.

23 Sec. 5124. During the year preceding the repeal of section
24 5105, the department shall conduct a study to determine the
25 availability and cost of environmental impairment insurance for
26 owners and operators of underground storage tank systems and
27 shall report to the legislature on the results of this study.

1 Sec. 5125. Sections 5105 and 5107 to 5124 are repealed
2 January 18, 1995.

3 Sec. 5126. Notwithstanding any provision of this part,
4 prior to the repeal of section 5105, the state treasurer shall
5 reserve enough money in the fund to pay for interest subsidies
6 pursuant to section 5119, and for bids, work invoices, and
7 requests for indemnification that were denied by the administra-
8 tor, if subsequent to the denial the owner or operator requested
9 review by the board, requested a contested case hearing, or filed
10 a lawsuit related to the denial, and the case is still pending.
11 After this money that is reserved reverts to the emergency
12 response fund, it shall be used to pay for interest subsidies,
13 and for bids, work invoices, and requests for indemnification in
14 cases where an owner or operator is successful in persuading the
15 board, the department, or a court that the administrator's denial
16 was in error.

17 Sec. 5127. Notwithstanding the prescribed limit provided in
18 section 5106(4), upon the repeal of section 5105, all money in
19 the fund shall revert to the emergency response fund created in
20 section 5106.

21 ARTICLE III WASTE MANAGEMENT

22 PART 61 HAZARDOUS WASTE

23 Sec. 6101. For the purposes of this part, the words and
24 phrases defined in sections 6102 to 6104 have the meanings
25 ascribed to them in those sections.

26 Sec. 6102. (1) "Board" means a site review board created as
27 provided in section 6117.

1 (2) "Committee" means the hazardous waste policy committee
2 created in section 6109.

3 (3) "Designated facility" means a hazardous waste treatment,
4 storage, or disposal facility that has received a permit or has
5 interim status under the solid waste disposal act, title II of
6 Public Law 89-272, 42 U.S.C. 6901, 6902 to 6907, 6911, 6912 to
7 6914a, 6915 to 6916, 6921 to 6931, 6933 to 6939b, 6941, 6942 to
8 6949a, 6951 to 6956, 6961 to 6964, 6971 to 6979a, 6981 to 6987,
9 6991 to 6991i, and 6992 to 6992k, or has a permit from a state
10 authorized under section 3006 of subtitle C of the solid waste
11 disposal act, 42 U.S.C. 6926, and which, if located in Michigan
12 has an operating license issued under this part, has a legally
13 binding agreement with the director that authorizes operation, or
14 is subject to the requirements of section 6123(4), (5), and (6).

15 (4) "Disposal" means the discharge, deposit, injection,
16 dumping, spilling, leaking, or placing of a hazardous waste into
17 or on land or water in a manner that the hazardous waste or a
18 constituent of the hazardous waste may enter the environment, or
19 be emitted into the air, or discharged into water, including
20 groundwater.

21 (5) "Disposal facility" means a facility or a part of a
22 facility where managed hazardous waste, as defined by rule, is
23 intentionally placed into or on any land or water and at which
24 hazardous waste will remain after closure.

25 (6) "Failure mode assessment" means an analysis of the
26 potential major methods by which safe handling of hazardous
27 wastes may fail at a treatment, storage, or disposal facility.

1 Sec. 6103. (1) "Generation" means the act or process of
2 producing hazardous waste.

3 (2) "Generator" means any person, by site, whose act or pro-
4 cess, produces hazardous waste as identified or listed pursuant
5 to section 6128 or whose act first causes a hazardous waste to
6 become subject to regulation under this part.

7 (3) "Hazardous waste" means waste or a combination of waste
8 and other discarded material including solid, liquid, semisolid,
9 or contained gaseous material that because of its quantity; qual-
10 ity; concentration; or physical, chemical, or infectious charac-
11 teristics may cause or significantly contribute to an increase in
12 mortality or increase in serious irreversible illness or serious
13 incapacitating, but reversible illness, or pose a substantial
14 present or potential hazard to human health or the environment if
15 improperly treated, stored, transported, disposed of, or other-
16 wise managed. Hazardous waste does not include material which is
17 solid or dissolved material in domestic sewage discharge, or
18 solid or dissolved material in an irrigation return flow dis-
19 charge, or industrial discharge that is a point source subject to
20 permits under section 402 of title IV of the federal water pollu-
21 tion control act, chapter 758, 86 Stat. 880, 33 U.S.C. 1342, or
22 is a source, special nuclear, or byproduct material as defined by
23 the atomic energy act of 1954, chapter 1073, 68 Stat. 919.

24 (4) "Hazardous waste management" means the systematic con-
25 trol of the collection, source separation, storage, transporta-
26 tion, processing, treatment, recovery, recycling, and disposal of
27 hazardous waste.

1 (5) "Landfill" means a disposal facility or part of a
2 facility where hazardous waste is placed in or on land and which
3 is not a land treatment facility, a surface impoundment, or an
4 injection well.

5 (6) "Land treatment facility" means a treatment facility or
6 part of a treatment facility at which hazardous waste is applied
7 onto or incorporated into the soil surface; such facilities are
8 disposal facilities if the waste will remain after closure.

9 (7) "Limited storage facility" means a storage facility as
10 defined in section 6104(4) that meets all of the following
11 conditions:

12 (a) Has a maximum storage capacity that does not exceed
13 25,000 gallons of hazardous waste.

14 (b) Storage occurs only in tanks or containers.

15 (c) Has not more than 200 containers on site that have a
16 capacity of 55 gallons or less.

17 (d) Does not store hazardous waste on site for more than
18 90 days.

19 (e) Does not receive hazardous waste from a treatment, stor-
20 age, or disposal facility.

21 (8) "Manifest" means a form approved by the director used
22 for identifying the quantity, composition, origin, routing, and
23 destination of hazardous waste during its transportation from the
24 point of generation to the point of disposal, treatment, or
25 storage.

26 (9) "Manifest system" means the system used for identifying
27 the quantity, composition, origin, routing, and destination of

1 hazardous waste during its transportation from the point of
2 generation to the point of disposal, treatment, or storage.

3 (10) "Mechanism" means a letter of credit; a financial test
4 that demonstrates the financial strength of the company owning a
5 treatment, storage, or disposal facility or a parent company
6 guaranteeing financial assurance for a subsidiary; or an insur-
7 ance policy that will provide funds for closure or postclosure
8 care of a treatment, storage, or disposal facility.

9 (11) "Municipal solid waste incinerator" means an incinera-
10 tor that is owned or operated by any person, and meets all of the
11 following requirements:

12 (a) The incinerator receives solid waste from off site and
13 burns only household waste from single and multiple dwellings,
14 hotels, motels, and other residential sources, or this household
15 waste together with solid waste from commercial, institutional,
16 municipal, county, or industrial sources that, if disposed of,
17 would not be required to be placed in a disposal facility
18 licensed under this part.

19 (b) The incinerator has established contractual requirements
20 or other notification or inspection procedures sufficient to
21 assure that the incinerator receives and burns only waste
22 referred to in subdivision (a).

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

25 (d) The incinerator is not an industrial furnace as defined
26 in 40 C.F.R. 260.10.

1 (12) "Municipal solid waste incinerator ash" means the
2 substances remaining after combustion in a municipal solid waste
3 incinerator.

4 (13) "Municipality" means a city, village, township, or
5 Indian tribe.

6 (14) "On site" means on the same or geographically contigu-
7 ous property that may be divided by a public or private right of
8 way if the entrance and exit between the pieces of property are
9 at a crossroads intersection and access is by crossing rather
10 than going along the right of way. Noncontiguous pieces of prop-
11 erty owned by the same person but connected by a right of way
12 that the owner controls and to which the public does not have
13 access is also considered on site property.

14 Sec. 6104. (1) "Operator" means the person responsible for
15 the overall operation of a disposal, treatment, or storage facil-
16 ity with approval of the director either by contract or license.

17 (2) "Solid waste" means that term as it is defined in part
18 63.

19 (3) "Storage" means the holding of hazardous waste for a
20 temporary period, at the end of which the hazardous waste is
21 treated, disposed of, or stored elsewhere.

22 (4) "Storage facility" means a facility or part of a facil-
23 ity where managed hazardous waste, as defined by rule, is subject
24 to storage. A generator who accumulates managed hazardous waste,
25 as defined by rule, on site in containers or tanks for less than
26 91 days or a period of time prescribed by rule is not a storage
27 facility.

1 (5) "Surface impoundment" or "impoundment" means a
2 treatment, storage, or disposal facility or part of a treatment,
3 storage, or disposal facility that is a natural topographic
4 depression, man-made excavation, or diked area formed primarily
5 of earthen materials, although it may be lined with man-made
6 materials, which is designed to hold an accumulation of liquid
7 wastes or wastes containing free liquids, and which is not an
8 injection well. Examples of surface impoundments are holding,
9 storage, settling, and aeration pits, ponds, and lagoons.

10 (6) "The solid waste disposal act" means the solid waste
11 disposal act, title II of Public Law 89-272, 42 U.S.C. 6901, 6902
12 to 6907, 6911, 6912 to 6914a, 6915 to 6916, 6921 to 6931, 6933 to
13 6939b, 6941, 6942 to 6949a, 6951 to 6956, 6961 to 6964, 6971 to
14 6979a, 6981 to 6987, 6991 to 6991i, and 6992 to 6992k.

15 (7) "Transporter" means a person engaged in the off site
16 transportation of hazardous waste by air, rail, highway, or
17 water.

18 (8) "Treatment" means any method, technique, or process,
19 including neutralization, designed to change the physical, chemi-
20 cal, or biological character or composition of any hazardous
21 waste, so as to neutralize the waste, so as to recover energy or
22 material resources from the waste, or so as to render the waste
23 nonhazardous or less hazardous, safer to transport, store, or
24 dispose of, amenable to recovery, amenable to storage, or reduced
25 in volume. Treatment includes any activity or processing
26 designed to change the physical form or chemical composition of
27 hazardous waste so as to render it nonhazardous.

1 (9) "Treatment facility" means a facility or part of a
2 facility where managed hazardous waste, as defined by rule, is
3 subject to treatment.

4 (10) "Updated plan" means the updated state hazardous waste
5 management plan prepared under section 6110.

6 (11) "Vehicle" means a device used to transport hazardous
7 waste. Each cargo carrying body is a separate transport
8 vehicle.

9 Sec. 6105. A person shall not generate, dispose, store,
10 treat, or transport hazardous waste in this state without comply-
11 ing with the requirements of this part.

12 Sec. 6106. The generation, transportation, treatment, stor-
13 age, disposal, reuse, and recycling of municipal solid waste
14 incinerator ash is regulated under part 63, and not under this
15 part.

16 Sec. 6107. The department, the board, and the committee, in
17 the conduct of their duties as prescribed under this part, shall
18 assist in encouraging, developing, and implementing methods of
19 hazardous waste management which are environmentally sound, which
20 maximize the utilization of valuable resources, and which encour-
21 age resource conservation, including source separation, recycl-
22 ing, and waste reduction, and which are consistent with the plan
23 to be provided by the department of public health pursuant to
24 section 12103(d) of the public health code, Act No. 368 of the
25 Public Acts of 1978, being section 333.12103 of the Michigan
26 Compiled Laws. In addition, the director, the department, the
27 board, and the committee, in the conduct of their duties as

1 prescribed by this part, shall assist in implementing the policy
2 of this state to minimize the placement of untreated hazardous
3 waste in disposal facilities.

4 Sec. 6108. (1) Except as otherwise provided in this sec-
5 tion, each owner or operator of a landfill shall pay to the
6 department a fee assessed on hazardous waste disposed of in a
7 landfill. The fee shall be based on the quantity of waste speci-
8 fied on the manifest or monthly operating report and shall be
9 \$10.00 per ton, \$10.00 per cubic yard, or 1/2 cent per pound
10 depending on the unit of measure used by the owner or operator to
11 calculate the fee. The fee for fractional quantities of hazard-
12 ous waste shall be proportional. If the waste is required to be
13 listed on a manifest and the owner or operator of the landfill
14 determines that the waste quantity figure on the manifest is not
15 accurate, the owner or operator shall correct the waste quantity
16 figure on all manifest copies accompanying the shipment, note the
17 reason for the changes in the discrepancy indication space on the
18 manifest, and assess the fee in accordance with the corrected
19 waste quantity figure. Payment shall be made within 30 days
20 after the close of each quarter. The landfill owner or operator
21 shall assess off-site generators the fee. The fee for hazardous
22 waste that is generated and disposed of on the site of a landfill
23 owner or operator shall be paid by that owner or operator.

24 (2) Except as otherwise provided in this section, each owner
25 or operator of a solidification facility licensed pursuant to
26 section 6123 shall pay to the department a fee assessed on
27 hazardous waste received at the solidification facility. The fee

1 shall be based on the quantity of waste specified on the manifest
2 or monthly operating report and shall be \$10.00 per ton, \$10.00
3 per cubic yard, 4 cents per gallon, or 1/2 cent per pound depend-
4 ing on the unit of measure used by the owner or operator to cal-
5 culate the fee. The fee for fractional quantities of hazardous
6 waste shall be proportional. If the waste is required to be
7 listed on a manifest and the owner or operator of the solidifica-
8 tion facility determines that the waste quantity figure on the
9 manifest is not accurate, the owner or operator shall correct the
10 waste quantity figure on all manifest copies accompanying the
11 shipment, note the reason for the change in the discrepancy indi-
12 cation space on the manifest, and assess the fee in accordance
13 with the corrected waste quantity figure. Payment shall be made
14 within 30 days after the close of each quarter. The solidifica-
15 tion facility owner or operator shall assess off-site generators
16 the fee. The fee for hazardous waste that is generated and
17 solidified on the site of a solidification owner or operator
18 shall be paid by that owner or operator.

19 (3) The following hazardous waste shall be exempt from the
20 fees provided for in this section:

21 (a) Ash that results from the incineration of hazardous
22 waste or the incineration of solid waste as defined in part 63.

23 (b) Hazardous waste exempted by rule because of its charac-
24 ter or the treatment it has received.

25 (c) Hazardous waste that is removed from a site of environ-
26 mental contamination that is included in a list submitted to the
27 legislature pursuant to section 4505, or hazardous waste that is

1 removed as part of a site cleanup activity at the expense of the
2 state or federal government.

3 (d) Solidified hazardous waste produced by a solidification
4 facility licensed pursuant to section 6123 and destined for land
5 disposal.

6 (e) Hazardous waste generated pursuant to a 1-time closure
7 or site cleanup activity in this state where the closure or
8 cleanup activity has been authorized in writing by the director
9 or his or her authorized representative. Hazardous waste result-
10 ing from the cleanup of inadvertent releases which occur after
11 March 30, 1988 shall not be exempt from the fee.

12 (f) Primary and secondary wastewater treatment solids from a
13 wastewater treatment plant that includes an aggressive biological
14 treatment facility as defined in section 3005(j)(12)(b) of subti-
15 tle C of the solid waste disposal act, title II of Public Law
16 89-272, 42 U.S.C. 6925.

17 (g) Emission control dust or sludge from the primary produc-
18 tion of steel in electric furnaces.

19 (4) An owner or operator of a landfill or solidification
20 facility shall assess or pay the fee described in this section
21 unless a written signed certification is provided by the genera-
22 tor indicating that the waste is exempt from the fee. If the
23 waste that is exempt from the fee is required to be listed on a
24 manifest, the certification shall contain the manifest number of
25 the shipment and the specific fee exemption the waste qualifies
26 for. If the waste that is exempt from the fee is not required to
27 be listed on a manifest, the certification shall provide the

1 volume of exempt waste, the waste code or waste codes of the
2 exempt waste, the date of disposal or solidification, and the
3 specific fee exemption the waste qualifies for. The owner or
4 operator of the landfill or solidification facility shall retain
5 this certification for 4 years from the date of receipt.

6 (5) The department or a health department certified pursuant
7 to section 6145 shall evaluate the accuracy of generator fee
8 exemption certifications and shall take enforcement action
9 against a generator who files a false certificate. In addition,
10 the department shall take enforcement action to collect fees that
11 are not paid as required by this section.

12 (6) The landfill owner or operator and the solidification
13 facility owner or operator shall forward fee revenue due to the
14 department with a completed form that is provided or approved by
15 the director. The owner or operator shall certify that all
16 information provided in the form is accurate. The form shall
17 include the following information:

18 (a) The volume of waste subject to a fee.

19 (b) The name of each generator who was assessed a fee, the
20 generator's identification number, manifest numbers, waste vol-
21 umes, and the amount of the fee assessed.

22 (7) A generator who documents to the director or an autho-
23 rized representative of the director, on a form provided by the
24 department, a reduction in the amount of hazardous waste gener-
25 ated as a result of a process change, or documents a reduction in
26 the amount of hazardous waste that is being disposed of in a
27 landfill, either directly or following solidification at a

1 solidification facility, as a result of a process change or the
2 generator's increased use of source separation, input substitu-
3 tion, process reformulation, recycling, treatment, or an exchange
4 of hazardous waste that results in a utilization of that waste is
5 eligible for a refund from the state. The refund shall be in the
6 amount of \$10.00 per ton, \$10.00 per cubic yard, 4 cents per
7 gallon, or 1/2 cent per pound of waste reduced or managed through
8 an alternative to landfill disposal. A generator is not eligible
9 to receive a refund for that portion of a reduction in the amount
10 of hazardous waste generated that is attributable to a decrease
11 in the generator's level of production of the products that
12 resulted in the generation of the hazardous waste.

13 (8) Commencing in 1990 and in each following year, a genera-
14 tor seeking a refund shall calculate the refund due by comparing
15 waste generation, treatment, and disposal activity in the calen-
16 dar year immediately preceding the date of filing with waste gen-
17 eration, treatment, and disposal activity in the calendar year 2
18 years prior to the date of filing.

19 (9) To be eligible for a refund, a generator shall file a
20 request with the director or an authorized representative of the
21 director by June 30 of the year following the year for which the
22 refund is being claimed.

23 (10) A refund shall not exceed the total fees paid by the
24 generator to the landfill operator or owner and the solidifica-
25 tion facility operator or owner.

1 (11) A form submitted by the generator as provided for in
2 subsection (7) shall be certified by the generator or the
3 generator's authorized agent.

4 (12) The department shall maintain information regarding the
5 landfill disposal fees received and refunds provided pursuant to
6 this section.

7 (13) The fees collected pursuant to this section shall be
8 forwarded to the state treasurer and deposited in the general
9 fund to be appropriated to pay refunds to generators under this
10 section and to fund programs created under parts 75 and 77.

11 (14) Fees provided for in this section shall not be assessed
12 on waste being disposed of in a landfill or solidified in a
13 solidification facility after December 31, 1992.

14 Sec. 6109. (1) The hazardous waste policy committee is cre-
15 ated in the department. The committee shall consist of the fol-
16 lowing members, appointed by the governor with the advice and
17 consent of the senate. At least 1 of the members shall have
18 on-site hazardous waste reduction experience:

19 (a) One representative each of city, county, and township
20 government.

21 (b) One individual representing hazardous waste
22 transporters.

23 (c) One individual representing hazardous waste generators
24 having knowledge in waste reduction.

25 (d) One individual representing hazardous waste treatment,
26 storage, or disposal facility operators.

1 (e) One individual representing a general business
2 organization having knowledge in waste reduction.

3 (f) One individual representing an environmental
4 organization.

5 (g) One individual representing a conservation
6 organization.

7 (h) One individual representing the general public.

8 (i) Two individuals from colleges or universities with
9 research specialties related to hazardous waste reduction, treat-
10 ment, storage, or disposal.

11 (2) A vacancy occurring on the committee shall be filled in
12 the same manner as the original appointment.

13 (3) A chairperson of the committee shall be selected by the
14 governor.

15 (4) The committee by majority vote of the committee shall
16 establish operating procedures. The operating procedures shall
17 be made available for public review.

18 (5) The members of the committee shall be entitled to per
19 diem compensation. The per diem compensation of the committee
20 and a schedule for reimbursement of expenses shall be established
21 annually by the legislature.

22 (6) In the conduct of its business, the committee shall
23 solicit the advice of, and consult periodically with, persons
24 within this state for the purpose of receiving information or
25 advice that may be helpful in the preparation of the updated
26 plan.

1 (7) The committee shall disband after the final adoption of
2 the updated plan by the commission of natural resources.

3 Sec. 6110. (1) Not later than January 1, 1990, the commit-
4 tee shall prepare an updated state hazardous waste management
5 plan.

6 (2) The updated plan shall:

7 (a) Update the state hazardous waste management plan adopted
8 by the commission on January 15, 1982.

9 (b) Be based upon location of generators, health and safety,
10 economics of transporting, type of waste, and existing treatment,
11 storage, or disposal facilities.

12 (c) Include information generated by the department of com-
13 merce and the department on hazardous waste capacity needs in the
14 state.

15 (d) Include information provided by the office of waste
16 reduction created in part 75.

17 (e) Plan for the availability of hazardous waste treatment
18 or disposal facilities which have adequate capacity for the
19 destruction, treatment, or secure disposition of all hazardous
20 wastes that are reasonably expected to be generated within the
21 state during the 20-year period after October 1, 1988, as is
22 described in section 104(c)(9)(A) of title I of the comprehensive
23 environmental response, compensation, and liability act of 1980,
24 Public Law 96-510, 42 U.S.C. 9604.

25 (f) Plan for a reasonable geographic distribution of treat-
26 ment, storage, and disposal facilities to meet existing and
27 future needs, including proposing criteria for determining

1 acceptable locations for these facilities. The criteria shall
2 include a consideration of a location's geology, geography,
3 demography, waste generation patterns, along with environmental
4 factors, public health factors, and other relevant characteris-
5 tics as determined by the committee.

6 (g) Emphasize a shift away from the practice of landfilling
7 hazardous waste and toward the in-plant reduction of hazardous
8 waste and the recycling and treatment of hazardous waste.

9 (h) Include necessary legislative, administrative, economic
10 mechanisms, and a timetable to carry out the plan.

11 (3) The committee shall instruct the office of waste reduc-
12 tion created in part 75 to complete studies as considered neces-
13 sary for the completion of the updated plan. The studies may
14 include:

15 (a) An inventory and evaluation of the sources of hazardous
16 waste generation within this state or from other states, includ-
17 ing the types, quantities, and chemical and physical characteris-
18 tics of the hazardous waste.

19 (b) An inventory and evaluation of current hazardous waste
20 management, minimization, or reduction practices and costs,
21 including treatment, disposal, on-site recycling, reclamation,
22 and other forms of source reduction within this state.

23 (c) A projection or determination of future hazardous waste
24 management needs based on an evaluation of existing capacities,
25 treatment or disposal capabilities, manufacturing activity, limi-
26 tations, and constraints. Projection of needs shall consider the
27 types and sizes of treatment, storage, or disposal facilities,

1 general locations within the state, management control systems,
2 and an identified need for a state owned treatment, storage, or
3 disposal facility.

4 (d) An investigation and analysis of methods, incentives, or
5 technologies for source reduction, reuse, recycling, or recovery
6 of potentially hazardous waste and a strategy for encouraging the
7 utilization or reduction of hazardous waste.

8 (e) An investigation and analysis of methods and incentives
9 to encourage interstate and international cooperation in the man-
10 agement of hazardous waste.

11 (f) An estimate of the public and private cost of treating,
12 storing, or disposing of hazardous waste.

13 (g) An investigation and analysis of alternate methods for
14 treatment and disposal of hazardous waste.

15 (4) If the committee finds in preparing the updated plan
16 that there is a need for additional treatment or disposal facili-
17 ties in the state, then the committee shall identify incentives
18 the state could offer which would encourage the construction and
19 operation of additional treatment or disposal facilities in the
20 state that are consistent with the updated plan. The committee
21 shall propose criteria which could be used in evaluating appli-
22 cants for the incentives.

23 (5) Upon completion of the updated plan, the committee shall
24 publish a notice in a number of newspapers having major circula-
25 tion within the state as determined by the committee and shall
26 issue a statewide news release announcing the availability of the
27 updated plan for inspection or purchase at cost by interested

1 persons. The announcement shall indicate where and how the
2 updated plan may be obtained or reviewed and shall indicate that
3 not less than 6 public hearings shall be conducted at varying
4 locations in the state before formal adoption. The first public
5 hearing shall not be held until 60 days have elapsed from the
6 date of the notice announcing the availability of the updated
7 plan. The remaining public hearings shall be held within 120
8 days after the first public hearing at approximately equal time
9 intervals.

10 (6) After the public hearings, the committee shall prepare a
11 written summary of the comments received, provide comments on the
12 major concerns raised, make amendments to the updated plan, and
13 shall recommend to the commission whether the updated plan should
14 be adopted.

15 Sec. 6111. (1) The commission, with the advice of the
16 director of public health, shall adopt or reject the updated plan
17 within 60 days or at the second scheduled commission meeting
18 after receipt of the updated plan.

19 (2) If the commission rejects the updated plan, it shall
20 indicate its reason for rejection and return the updated plan to
21 the committee.

22 (3) The committee shall make the necessary changes and
23 submit the updated plan to the commission within 30 days after
24 receipt of the rejection.

25 Sec. 6112. The commission shall make a final decision on
26 the updated plan within 120 days after the commission first
27 receives the updated plan. If the commission fails to formally

1 adopt or reject the updated plan within 120 days, the updated
2 plan is considered adopted.

3 Sec. 6113. A new committee shall be appointed every 5 years
4 following the adoption of the updated plan by the commission.
5 The committee shall be appointed in the same manner as provided
6 in section 6109 for the original appointment. The committee
7 shall review the updated plan and amend the updated plan as con-
8 sidered necessary pursuant to the procedure provided in section
9 6110. The committee also shall review the implementation of this
10 part and submit to the legislature recommendations regarding the
11 implementation of this part.

12 Sec. 6114. Not more than 180 days after the final adoption
13 of the updated plan by the commission, the director shall submit
14 to the legislature proposed rules to implement the updated plan
15 created in section 6110.

16 Sec. 6115. After the updated plan is adopted by the commis-
17 sion, the director shall not issue a permit or license under this
18 part for a treatment, storage, or disposal facility until the
19 director has made a determination that the action is consistent
20 with the updated plan. This section does not apply to a treat-
21 ment, storage, or disposal facility granted a construction permit
22 or a license under this part before the final adoption of the
23 updated plan. However, such a facility shall be consistent with
24 the state hazardous waste management plan adopted by the commis-
25 sion on January 15, 1982.

26 Sec. 6116. (1) A treatment, storage, or disposal facility
27 in existence on January 1, 1980, or a treatment, storage, or

1 disposal facility in existence on November 19, 1980, for which
2 approval of construction has been received from the air pollution
3 control commission, is not subject to a review of the board or
4 require a construction permit under this part except for an
5 expansion, enlargement, or alteration of the treatment, storage,
6 or disposal facility beyond its original authorized design capac-
7 ity or beyond the area specified in the operating license, origi-
8 nal construction permit, or other authorization. This subsection
9 does not abridge or alter the effect of a local ordinance, permit
10 requirement, or other requirement on the construction of a treat-
11 ment, storage, or disposal facility described in this
12 subsection.

13 (2) The expansion, enlargement, or alteration of a treat-
14 ment, storage, or disposal facility in existence on January 1,
15 1980, constitutes a new proposal for which a construction permit
16 is required.

17 Sec. 6117. (1) A site review board shall be established to
18 review and grant or deny final approval for each site construc-
19 tion permit application that is referred to the board by the
20 director. If more than 1 construction permit application for
21 interrelated facilities on a single site within the same munici-
22 pality are submitted by the same applicant, reviewed concurrently
23 by the department, and referred to the board by the director, a
24 single board shall be established to review the site applications
25 concurrently but shall grant or deny final approval for each
26 application individually. A board shall consist of 9 voting

1 members and a nonvoting chairperson to be appointed as provided
2 in subsection (2).

3 (2) The following 9 members and 1 nonvoting chairperson
4 shall serve on every board established to review a site construc-
5 tion permit application:

6 (a) Seven members shall be members appointed by the gover-
7 nor, with the advice and consent of the senate. The 7 members on
8 each board shall include a geologist, a chemical engineer, and a
9 toxicologist, each of whom are on the faculty of an institution
10 of higher education within the state, a representative from a
11 manufacturing industry, 2 representatives of the public, and a
12 representative of a municipality. Subject to the other require-
13 ments of this subdivision, the governor may appoint more than 1
14 geologist, chemical engineer, toxicologist, representative from a
15 manufacturing industry, and representative of a municipality and
16 more than 2 representatives of the public. However, only 1 geol-
17 ogist, chemical engineer, toxicologist, representative from a
18 manufacturing industry, and representative of a municipality and
19 only 2 representatives of the public, as randomly designated by
20 the director, shall serve on a particular board. The member who
21 represents municipalities shall be associated with a municipality
22 or municipal association that is or represents the same type of
23 municipality in which a facility is proposed to be located. A
24 member representing a municipality or the public shall not serve
25 on a site review board that is evaluating an application for a
26 facility located within a county or municipality which directly
27 employs the member or in which the member resides. A vacancy

1 shall be filled for the unexpired portion of the period in the
2 same manner as the original appointments. All members appointed
3 by the governor, including a chairperson appointed pursuant to
4 subdivision (c), shall be appointed to serve on site review
5 boards for a period of 3 years, and may be appointed for addi-
6 tional 3-year periods. In addition, a member may serve beyond
7 the expiration of the member's 3-year period of service for so
8 long a period of time as is necessary to complete action on con-
9 struction permit applications pending at the expiration of the
10 member's 3-year period of service.

11 (b) One member shall be appointed by the governing body of
12 the municipality in which the treatment, storage, or disposal
13 facility is primarily proposed to be located to serve on the
14 board which is established to consider a particular construction
15 permit application. One member shall be appointed by the county
16 board of commissioners in which the treatment, storage, or dis-
17 posal facility is proposed to be located and shall be a resident
18 of the county where the facility is proposed to be located. The
19 members serving pursuant to this subdivision shall serve until
20 the particular construction permit application subject to their
21 review is approved, or until the application is rejected and is
22 no longer subject to review.

23 (c) An attorney shall be appointed by the governor, with the
24 advice and consent of the senate, to serve as a nonvoting chair-
25 person on each board established to review a site construction
26 permit. The chairperson shall have experience in conducting
27 formal meetings where sworn testimony is received. Subject to

1 the other requirements of this subdivision, the governor may
2 appoint more than 1 chairperson. However, only 1 chairperson,
3 designated by the director, shall serve on a particular board.

4 (3) The director or an authorized representative of the
5 director shall notify the local governing body of the municipal-
6 ity and county government of a construction permit application
7 filed with the department.

8 (4) Five of the 9 voting members of the board constitute a
9 quorum for the transaction of business of the board and the con-
10 currence of 5 voting members of the board constitutes a legal
11 action of the board. All meetings of the board shall be con-
12 ducted pursuant to the open meetings act, Act No. 267 of the
13 Public Acts of 1976, as amended, being sections 15.261 to 15.275
14 of the Michigan Compiled Laws.

15 (5) The director shall make staff available to assist a
16 board in carrying out its responsibilities.

17 (6) A site review board that is established before
18 December 28, 1987 shall proceed and fulfill its duties pursuant
19 to the applicable law in effect when the site review board was
20 established.

21 Sec. 6118. (1) Except as otherwise provided in section
22 6122, a person shall not establish a treatment, storage, or dis-
23 posal facility without a construction permit from the director.
24 A person proposing the establishment of a treatment, storage, or
25 disposal facility subject to the construction permit requirement
26 of this part, but not including a limited storage facility, shall
27 make application for a construction permit to the director on a

1 form provided by the director or an authorized representative of
2 the director.

3 (2) If an amendment to this part or to the rules promulgated
4 under this part subjects activities lawfully being conducted at a
5 treatment, storage, or disposal facility at the time the amend-
6 ment takes effect to the operating license requirements of this
7 part solely because of the amendment, the activities carried out
8 at the facility prior to the effective date of the amendment is
9 not subject to the construction permit requirements of this part,
10 except for an expansion of the facility with respect to such
11 activities beyond its original authorized design capacity or
12 beyond the area specified in an original permit, license, or
13 other authorization or an alteration of the method of hazardous
14 waste treatment or disposal.

15 (3) The application for a construction permit shall contain
16 the name and residence of the applicant, the location of the pro-
17 posed treatment, storage, or disposal facility, and other infor-
18 mation specified in this section, by rule, or by federal regula-
19 tion issued under title II of the solid waste disposal act. The
20 application shall be accompanied by a construction permit appli-
21 cation fee. The fee shall be calculated as provided in
22 subsection (10) or may be based on the actual cost of construc-
23 tion permit review according to procedures established by rule.
24 Construction permit application fees shall be deposited in the
25 general fund of the state. The application shall include a copy
26 of the actual published notice as described in subsection (9) and
27 a determination of existing hydrogeological characteristics

1 specified in a hydrogeological report and monitoring program
2 consistent with rules promulgated pursuant to this part, an envi-
3 ronmental assessment, an engineering plan, and the procedures for
4 closure and postclosure monitoring. The environmental assessment
5 shall include, at a minimum, an evaluation of the proposed
6 facility's impact on the air, water, and other natural resources
7 of the state; and also shall contain an environmental failure
8 mode assessment.

9 (4) Except as otherwise provided in this subsection, the
10 construction permit application shall include a disclosure state-
11 ment that includes all of the following:

12 (a) The full name and business address of all of the
13 following:

14 (i) The applicant.

15 (ii) The 5 persons holding the largest shares of the equity
16 in or debt liability of the proposed facility. The director may
17 waive all or any portion of this requirement for an applicant
18 that is a corporation with publicly traded stock.

19 (iii) The operator, if known.

20 (iv) If known, the 3 employees of the operator who will have
21 the most responsibility for the day-to-day operation of the
22 facility.

23 (v) Any other business entity included within the definition
24 of person in which any person required to be listed in subpara-
25 graphs (i) to (iv) has at any time had 25% or more of the equity
26 in or debt liability of that business entity. The director may

1 waive all or any portion of this requirement for an applicant
2 that is a corporation with publicly traded stock.

3 (b) All convictions for criminal violations of any environ-
4 mental statute enacted by a federal, state, Canadian, or provin-
5 cial agency for each person required to be listed under this
6 subsection. If debt liability is held by a chartered lending
7 institution, information required in this subsection and subsec-
8 tion (4)(c) and (d) is not required from that institution.

9 (c) A listing of all environmental permits or licenses
10 issued by a federal, state, Canadian, or provincial agency held
11 by each person required to be listed under this subsection that
12 were permanently revoked because of noncompliance.

13 (d) A listing of all activities at property owned or oper-
14 ated by each person required to be listed under this subsection,
15 if the incident resulted in a threat or potential threat to the
16 environment, and public funds were used to finance an activity to
17 mitigate the threat or potential threat to the environment,
18 except if the public funds expended to facilitate the mitigation
19 of environmental contamination were voluntarily and expeditiously
20 recovered from the applicant or other listed person without
21 litigation.

22 (5) If any information required to be included in the dis-
23 closure statement changes, or is supplemented after the filing of
24 the statement, the applicant, permittee, or licensee shall pro-
25 vide that information to the department in writing, within 30
26 days of the change or addition.

1 (6) Notwithstanding any other provision of law, the director
2 may deny an application for a construction permit if there are
3 any listings pursuant to subsection (4)(b), (c), or (d) as origi-
4 nally disclosed or as supplemented.

5 (7) A person may indicate an interest in being placed on a
6 department organized mailing list to be kept informed of any
7 rules, plans, construction permit applications, contested case
8 hearings, public hearings, or other information or procedures
9 relating to the administration of this part. A charge may be
10 required by the director to cover the cost of the materials.

11 (8) There is created within the state treasury a revolving
12 fund. When a site construction permit application is referred to
13 a site review board by the director, the applicant shall pay a
14 \$25,000.00 fee to be placed in this fund. The \$25,000.00 fee
15 shall be in addition to the application fee required under sub-
16 section (3). This fund shall cover the expenses of the site
17 review board members, the chairperson, a mediator, and any other
18 expenses necessary to the deliberations of the board. The direc-
19 tor or an authorized representative of the director shall admin-
20 ister the fund and authorize expenditures. The director or an
21 authorized representative of the director shall maintain records
22 to support any expenses charged to the fund. If expenses payable
23 from the fund exceed the \$25,000.00 fee paid by the applicant,
24 the additional expenses shall be paid from money appropriated by
25 the legislature to the revolving fund created in this
26 subsection. Any unexpended portion of an applicant's \$25,000.00
27 fee that is not expended to pay the expenses listed in this

1 subsection shall be reimbursed to the applicant after the site
2 review board process is concluded.

3 (9) An application for a site construction permit shall not
4 be complete unless it includes a copy of a newspaper notice which
5 the applicant published at least 30 days prior to submittal of
6 the application in a newspaper having major circulation in the
7 municipality and the immediate vicinity of the proposed treat-
8 ment, storage, or disposal facility. The required published
9 notice shall contain a map indicating the location of the pro-
10 posed treatment, storage, or disposal facility and information on
11 the nature and size of the proposed facility. In addition, the
12 notice shall contain all of the following information provided by
13 the director or an authorized representative of the director:

14 (a) A description of the application review process.

15 (b) The location where the complete application package may
16 be reviewed.

17 (c) How copies of the complete application package may be
18 obtained.

19 (10) An applicant for a construction permit for a treatment,
20 storage, or disposal facility shall calculate the applicable con-
21 struction permit application fee required under subsection (3) by
22 totaling the following for each construction permit application:

23 (a) For a landfill, surface impoundment, land
24 treatment, or waste pile facility.....\$9,000.00

25 (b) For an incinerator or treatment facility other
26 than a treatment facility in subdivision (a).....\$7,200.00

1 (c) For a storage facility, other than storage that
 2 is associated with treatment or disposal activities that
 3 may be regulated under a single permit.....\$ 500.00

4 (d) For the permitted site size of a landfill, surface
 5 impoundment, land treatment, or waste pile facility, except waste
 6 piles meeting the requirements of 40 C.F.R. 264.250(c), the
 7 following:

8 (i) Less than 5 acres..... \$100.00

9 (ii) 5 to 19 acres..... \$170.00

10 (iii) 20 to 79 acres..... \$240.00

11 (iv) 80 acres or more..... \$320.00

12 (e) For the permitted site size of a treatment or storage
 13 facility, other than a facility listed in subdivision (d), the
 14 following:

15 (i) Less than 5 acres..... \$ 50.00

16 (ii) 5 to 19 acres..... \$100.00

17 (iii) 20 to 79 acres..... \$100.00

18 (iv) 80 acres or more..... \$100.00

19 (f) For the projected waste volume per day for a landfill,
 20 surface impoundment, land treatment, or waste pile facility,
 21 except waste piles meeting the requirements of 40

22 C.F.R. 264.250(c), the following:

23 (i) Less than 50 cubic yards or 10,000 gallons..... \$ 60.00

24 (ii) 50 to 100 cubic yards or 10,000 to 20,000
 25 gallons..... \$ 80.00

26 (iii) 101 to 700 cubic yards or 20,000 to 140,000
 27 gallons..... \$100.00

1 (iv) More than 700 cubic yards or more than 140,000
 2 gallons..... \$130.00

3 (g) For the projected waste volume per day for a treatment
 4 or storage facility, other than a facility listed in
 5 subdivision (f), the following:

6 (i) Less than 50 cubic yards or 10,000 gallons..... \$ 50.00

7 (ii) 50 to 100 cubic yards or 10,000 to 20,000
 8 gallons..... \$100.00

9 (iii) 101 to 700 cubic yards or 20,000 to 140,000
 10 gallons..... \$100.00

11 (iv) More than 700 cubic yards or more than 140,000
 12 gallons..... \$150.00

13 (h) For the hydrogeological characteristics of a landfill,
 14 surface impoundment, land treatment, or waste pile facility,
 15 except waste piles meeting the requirements of 40

16 C.F.R. 264.250(c), the following:

17 (i) Natural clay..... \$ 40.00

18 (ii) Natural sand..... \$ 60.00

19 (iii) Compacted clay..... \$ 70.00

20 (iv) Artificially lined (other materials)..... \$100.00

21 (v) Any combination of the above..... \$100.00

22 (i) For the hydrogeological characteristics of sur-
 23 face water in a treatment or storage facility, other than
 24 a facility listed in subdivision (h)..... \$ 75.00

25 Sec. 6119. (1) Upon receipt of a construction permit appli-
 26 cation, which complies with the requirements of section 6118, the
 27 director or an authorized representative of the director shall:

1 (a) Immediately notify the permanent board members, the
2 municipality, and county in which the treatment, storage, or dis-
3 posal facility is located or proposed to be located; a local soil
4 erosion and sedimentation control agency appointed pursuant to
5 the soil erosion and sedimentation control act of 1972, Act
6 No. 347 of the Public Acts of 1972, being sections 282.101 to
7 282.125 of the Michigan Compiled Laws, each division within the
8 department that has responsibility in land, air, or water manage-
9 ment; a regional planning agency established by executive direc-
10 tive of the governor; and other appropriate agencies. The notice
11 shall describe the procedure by which the permit may be approved
12 or denied.

13 (b) Review the plans of the proposed treatment, storage, or
14 disposal facility to determine if the proposed operation complies
15 with this part and the rules promulgated under this part. The
16 review shall be made within the department. The review shall
17 include, but not be limited to, a review of air quality, water
18 quality, waste management, hydrogeology, and the applicant's dis-
19 closure statement. A written and signed review by each person
20 within the department reviewing the permit and plans shall be
21 received and recorded before a construction permit is referred to
22 the site review board or is denied by the director. If the site
23 review, plan review, and the application meet the requirements of
24 this part and the rules promulgated under this part, the director
25 shall refer the application to the site review board for review.
26 An expansion of a treatment, storage, or disposal facility beyond
27 the original authorized design capacity or beyond the area

1 specified in the original permit, license, or other authorization
2 or an alteration of the method of hazardous waste treatment or
3 disposal constitutes a new proposal for which a new construction
4 permit is required.

5 (c) Coordinate and review all permits that the applicant is
6 required to obtain from the department in order to construct the
7 proposed treatment, storage, or disposal facility.

8 (d) Hold a public hearing within 60 days after receipt of a
9 complete construction permit application.

10 (2) The director shall refer an application to the site
11 review board or shall notify the applicant of the intent to deny
12 the construction permit application within 120 days after the
13 director receives an application meeting the requirements of sec-
14 tion 6118.

15 (3) If the director refers an application to the site review
16 board, prior to the first board meeting the director shall pro-
17 vide each board member with a copy of the application, a staff
18 report including a summary of public comments, a responsiveness
19 summary, and a draft construction permit.

20 (4) If the director does not refer an application to the
21 site review board or does not notify the applicant of the intent
22 to deny the construction permit application within 120 days, the
23 construction permit application shall be submitted to the board
24 for action.

25 (5) If the director intends to deny the application, the
26 director shall commence a public participation process that is
27 equivalent to that required by the applicable provisions of title

1 II of the solid waste disposal act, or regulations promulgated
2 under that title. Upon completion of the public participation
3 process, the director shall review all the comments made during
4 that process and shall refer the application to the site review
5 board or deny the application. If the director refers the con-
6 struction permit application to the board, the director shall
7 proceed as described in section 6120.

8 Sec. 6120. (1) The director or an authorized representative
9 of the director shall notify those members appointed by the gov-
10 ernor who will serve on the board within 75 days after receipt of
11 a construction permit application, if the director has not noti-
12 fied the applicant of the intent to deny the application, or at
13 the time the director refers an application to the board, or at
14 the time an application is automatically referred to the board
15 pursuant to section 6119(4), whichever is earlier. At that time
16 the department also shall notify the county and the municipality
17 in which the proposed treatment, storage, or disposal facility is
18 to be located and request the appointment of the members of the
19 board as provided in section 6117(2)(b). The notification shall
20 include a notice of intent to issue all departmental permits
21 required for the construction pending approval by the board.
22 Within 45 days after the notification, the county and the munici-
23 pality shall select the members to serve on the board. The board
24 shall be created at that time and notification of the creation of
25 the board shall be made to the chairperson.

26 (2) Within 30 days after creation of a board, the board
27 shall meet to review and establish a timetable for the

1 consideration of an application for a proposed treatment,
2 storage, or disposal facility.

3 (3) The board shall:

4 (a) Set a date and arrange for publication of notice of a
5 public hearing in a newspaper having major circulation in the
6 vicinity of the proposed site, at its first meeting. The public
7 notice shall:

8 (i) Contain a map indicating the location of the proposed
9 treatment, storage, or disposal facility, a description of the
10 proposed action, and the location where the application for a
11 construction permit may be reviewed and where copies may be
12 obtained.

13 (ii) Identify the time, place, and location for the public
14 hearing held to receive public comment and input on the applica-
15 tion for a construction permit.

16 (b) Hold a public hearing within 45 days of the first board
17 meeting.

18 (c) Publish the notice not less than 30 days before the date
19 of the public hearing.

20 (4) Comment and input on the proposed treatment, storage, or
21 disposal facility may be presented orally or in writing at the
22 public hearing, and shall continue to be accepted in writing by
23 the board for 15 days after the public hearing date.

24 (5) After the public hearing comment period has been closed,
25 the board shall list the issues that are to be addressed through
26 a negotiation process and list the issues to be evaluated by the
27 board through its deliberations.

1 (6) A negotiation process shall take place between the
2 applicant and the affected parties who shall be identified by the
3 board. A representative of the municipality and a representative
4 of the county in which the facility is proposed to be located
5 shall each be considered an affected party. If requested by any
6 affected party or the applicant, the board shall appoint a medi-
7 ator to assist during negotiations. The negotiation process
8 shall:

9 (a) Proceed concurrently with the board's hearings process.

10 (b) Address the list of issues referred by the board and any
11 other issues unanimously agreed to be considered by the applicant
12 and all affected parties.

13 (c) Be completed within 150 days after the first meeting of
14 the board unless the applicant and 1 or more affected parties
15 involved in the negotiation process jointly request an extension
16 of not more than 60 days and the extension is approved by the
17 board. The board shall not grant extensions in excess of 60
18 days. An extension granted under this subdivision may extend the
19 time period in which the board either approves or rejects the
20 construction permit application as specified in subsection (15).

21 (7) On each negotiation issue which has not reached a nego-
22 tiated settlement, the board shall select between final best
23 offers presented by affected parties. The final best offer or
24 the negotiated settlement shall not be less stringent than the
25 requirements of the law or pertinent decisions of the board,
26 whichever is the most stringent.

1 (8) The board shall conduct formal or informal hearings to
2 receive evidence on the disputed issues not subject to the
3 negotiation process described in subsections (6) and (7).

4 (9) The formal hearings process shall be conducted by the
5 board to receive information from technical experts on disputed
6 issues. Any affected party may request permission by the board
7 to participate in the board's formal hearings within 15 days
8 after the board's public hearing. The board shall determine
9 which affected parties shall participate in the board's formal
10 hearing. If the board denies the request of an affected party to
11 participate in the board's formal hearing, the board shall give
12 the affected party notice of the board's decision and the reasons
13 for the decision. A representative of the municipality and a
14 representative of the county in which the facility is proposed to
15 be located shall each be automatically entitled to participate.
16 During the board's formal hearings process, the board shall:

17 (a) Receive sworn testimony.

18 (b) Cross-examine witnesses.

19 (c) Allow representatives of affected parties to
20 cross-examine witnesses.

21 (d) Request participation as needed.

22 (10) Comments made at informal hearings shall not be made
23 under oath and no cross-examination shall occur.

24 (11) The board shall deliberate on the impact of the pro-
25 posed treatment, storage, or disposal facility on the municipal-
26 ity in which it is to be located and make a final determination
27 on the construction permit application.

1 (12) The board shall consider, at a minimum all of the
2 following:

3 (a) The risk and impact of accident during the transporta-
4 tion of hazardous waste.

5 (b) The risk and impact of contamination of ground and sur-
6 face water by leaching and runoff from the proposed treatment,
7 storage, or disposal facility.

8 (c) The risk of fires or explosions from improper treatment,
9 storage, and disposal methods.

10 (d) The impact on the municipality where the proposed treat-
11 ment, storage, or disposal facility is to be located in terms of
12 the health, safety, cost, and consistency with local planning and
13 existing development. The board also shall consider local ordi-
14 nances, permits, or other requirements and their potential rela-
15 tionship to the proposed treatment, storage, or disposal
16 facility.

17 (e) The nature of the probable environmental impact, includ-
18 ing the specification of the predictable adverse effects on the
19 following:

20 (i) The natural environment and ecology.

21 (ii) Public health and safety.

22 (iii) Scenic, historic, cultural, and recreational value.

23 (iv) Water and air quality, and wildlife.

24 (f) An evaluation of measures to mitigate adverse effects.

25 (g) The board shall consider the information contained in
26 the construction permit application disclosure statement.

1 (13) The board also shall consider the concerns and
2 objections submitted by the public. The board shall facilitate
3 efforts to provide that the concerns and objections are mitigated
4 by establishing additional stipulations specifically applicable
5 to the treatment, storage, or disposal facility and operation at
6 that site. Through deliberations, the board may modify the con-
7 struction permit application in response to its findings. To the
8 fullest extent practicable, the board also shall integrate by
9 stipulation the provisions of the local ordinances, permits, or
10 requirements.

11 (14) The board may seek the advice of any person in order to
12 render a decision to approve or deny the construction permit
13 application.

14 (15) Within 180 days after the first meeting of the board,
15 the board shall make a decision on the negotiated agreement, and
16 the final best offer from each party on each issue and shall
17 either approve or reject the construction permit application.
18 The 180-day time period may be extended as provided in subdivi-
19 sion (6)(c). However, an extension shall not exceed 60 days.

20 (16) If the board approves the construction permit applica-
21 tion, the board shall direct the director or an authorized repre-
22 sentative of the director to prepare a draft construction permit
23 and initiate a public participation process equivalent to that
24 required by the applicable provisions of the solid waste disposal
25 act or regulations promulgated under that act. The director or
26 an authorized representative of the director shall act in accord
27 with the direction of the board. Upon completion of the public

1 participation process, the director shall review all comments
2 made during that process and shall issue or revise and issue the
3 construction permit or reconvene the board to consider issues
4 specified by the director that were raised during the public par-
5 ticipation process. Within 30 days after having been reconvened
6 under this subsection, the board shall reject the application and
7 direct the director to act accordingly, direct the director to
8 issue or to revise and issue the construction permit, or direct
9 the director to revise the draft construction permit and initiate
10 a public participation process equivalent to that required by the
11 applicable provisions of title II of the solid waste disposal act
12 or regulations promulgated under that title.

13 (17) If the board rejects the construction permit applica-
14 tion, the board shall do all of the following:

15 (a) State its reasons in writing and indicate the necessary
16 changes to make the application acceptable if a new application
17 is made.

18 (b) Direct the director to deny the construction permit and
19 initiate a public participation process equivalent to that
20 required by the applicable provisions of the solid waste disposal
21 act, or regulations promulgated under that act. The director
22 shall act in accord with the direction of the board.

23 Sec. 6121. A local ordinance, permit requirement, or other
24 requirement does not prohibit the construction of a treatment,
25 storage, or disposal facility, except as otherwise provided in
26 section 6122.

1 Sec. 6122. (1) A person may establish a limited storage
2 facility without a construction permit from the director.
3 However, a person shall not establish a limited storage facility
4 or conduct, manage, maintain, or operate a limited storage facil-
5 ity within this state without an operating license from the
6 director issued under this section, notwithstanding section
7 6123. A limited storage facility is subject to the rules per-
8 taining to storage facilities.

9 (2) An applicant for a limited storage facility operating
10 license shall apply for that license on a form provided by the
11 director that shall include the name and residence of the appli-
12 cant, the location of the proposed or existing facility, other
13 information specified by rule or by federal regulation issued
14 under the solid waste disposal act, and proof of financial
15 responsibility. The application shall include a determination of
16 existing hydrogeological characteristics specified in a hydrogeo-
17 logical report and monitoring program consistent with rules
18 promulgated by the director, an environmental assessment, an
19 engineering plan, procedures for closure, and a resolution or
20 other formal determination of the governing body of the munici-
21 pality in which the proposed limited storage facility would be
22 located indicating that the limited storage facility is compati-
23 ble with local zoning ordinances. However, in the absence of a
24 resolution or other formal determination, the application shall
25 include a copy of a registered letter sent to the municipality
26 dated 60 days prior to the application submittal indicating the
27 intent to construct a limited storage facility, requesting a

1 formal determination on whether the proposed facility is
2 compatible with local zoning ordinances in effect on the date the
3 letter is received and indicating that failure to pass a resolu-
4 tion or make a formal determination within 60 days of receipt of
5 the letter means that the proposed facility is to be considered
6 compatible with applicable zoning ordinances. The environmental
7 assessment shall include, at a minimum, an evaluation of the pro-
8 posed facility's impact on the air, water, and other natural
9 resources of the state and also shall contain an environmental
10 failure mode assessment. The application shall be accompanied by
11 a fee of \$500.00, which shall be deposited in the general fund of
12 the state.

13 (3) If a municipality does not make a formal determination
14 concerning whether a proposed limited storage facility is compat-
15 ible with local zoning ordinances within 60 days of receiving a
16 registered letter as described in subsection (2), it shall mean
17 that the limited storage facility is to be considered compatible
18 with local zoning ordinances and incompatibility with local
19 zoning shall not be a basis for denial of the license by the
20 director. In determining whether the proposed limited storage
21 facility is compatible with local zoning ordinances, the munici-
22 pality shall assess the proposed facility's compatibility with
23 ordinances in effect at the date of receipt of the registered
24 letter.

25 (4) Prior to issuing an operating license for a limited
26 storage facility, the director shall deliberate on the impact
27 that the proposed limited storage facility would have on the

1 municipality in which it is to be located and shall consider, at
2 a minimum, all of the following:

3 (a) The risk and impact of accident during the transporta-
4 tion of hazardous waste.

5 (b) The risk and impact of contamination of ground and sur-
6 face water by leaching and runoff from the proposed limited stor-
7 age facility.

8 (c) The risk of fires or explosions from improper storage
9 methods.

10 (d) The impact on the municipality where the proposed
11 limited storage facility is to be located in terms of the health,
12 safety, cost, and consistency with local planning and existing
13 development. The director also shall consider local ordinances,
14 permits, or other requirements and their potential relationship
15 to the proposed limited storage facility.

16 (e) The nature of the probable environmental impact, includ-
17 ing the specific predictable adverse effects on the following:

18 (i) The natural environment and ecology.

19 (ii) Public health and safety.

20 (iii) Scenic, historic, cultural, and recreational value.

21 (iv) Water and air quality and wildlife.

22 (f) An evaluation of measures to mitigate adverse effects.

23 (5) The director shall consider the concerns and objections
24 submitted by the public. The director shall facilitate efforts
25 to provide that the concerns and objections are mitigated by
26 establishing additional stipulations specifically applicable to
27 the limited storage facility and operation at that site. The

1 director shall not issue an operating license under this section
2 unless the proposed limited storage facility is compatible with
3 the zoning ordinances of the municipality in which the limited
4 storage facility would be located.

5 (6) The applicant also shall submit to the director a certi-
6 fication under the seal of a licensed professional engineer veri-
7 fying that the construction of the limited storage facility has
8 proceeded according to the plans approved by the director. The
9 director shall require additional certification periodically
10 during the operation or to verify proper closure of the site.

11 (7) The director shall either approve or deny the applica-
12 tion for an operating license. If the director denies the oper-
13 ating license, the director shall state the reasons for the
14 denial in writing.

15 Sec. 6123. (1) Unless a person is complying with subsec-
16 tions (4), (5), and (6) or a rule promulgated under section
17 6127(4), a person shall not conduct, manage, maintain, or operate
18 a treatment, storage, or disposal facility within this state
19 without an operating license from the director.

20 (2) The application for an operating license shall contain
21 the name and residence of the applicant, the location of the pro-
22 posed or existing treatment, storage, or disposal facility, and
23 other information considered necessary by the director including
24 proof of financial responsibility. In addition, the application
25 for the initial operating license after issuance of a construc-
26 tion permit shall contain all of the disclosure information
27 called for in section 6118(4) which was not provided as part of

1 the construction permit application and any changes in or
2 additions to the previously submitted disclosure information. In
3 addition, the owner and operator shall certify that the disclo-
4 sure listings previously submitted are still correct. An appli-
5 cant for an operating license for a treatment, storage, or dis-
6 posal facility which is a surface impoundment, landfill, or land
7 treatment facility shall demonstrate financial responsibility for
8 claims arising from nonsudden and accidental occurrences relating
9 to the operation of the facility that cause injury to persons or
10 property. The application shall be accompanied by a fee of
11 \$500.00. The license fees shall be deposited in the general fund
12 of the state.

13 (3) The applicant also shall submit to the director a certi-
14 fication under the seal of a registered professional engineer
15 verifying that the construction of the treatment, storage, or
16 disposal facility has proceeded according to the plans approved
17 by the director and, if applicable, the approved construction
18 permit. The director shall require additional certification
19 periodically during the operation or to verify proper closure of
20 the site. The director shall require from those treatment, stor-
21 age, or disposal facilities which are permitted to operate pursu-
22 ant to section 6116, certification of the treatment, storage, or
23 disposal facilities' capability of treating, storing, or dispos-
24 ing of hazardous waste in compliance with this part.

25 (4) A person owning or operating a storage facility that is
26 in existence on March 30, 1983 and at which managed hazardous
27 wastes, as defined by rule, are stored, who becomes subject to

1 the operating license requirements of this section as a result of
2 the changes resulting from the 1982 amendatory act that amended
3 former Act No. 64 of the Public Acts of 1979 has until June 28,
4 1983 to provide the director with a detailed written description
5 of the hazardous waste activities carried on at the storage
6 facility.

7 (5) The director shall establish a schedule for requiring
8 each person subject to subsection (4) to submit an operating
9 license application. The director may adjust this schedule as
10 necessary. Each person subject to subsection (4) shall submit a
11 complete operating license application within 120 days of the
12 date requested to do so by the director.

13 (6) Any person described in subsection (4) may continue to
14 operate a storage facility until an operating license application
15 is approved or denied if all of the following conditions have
16 been met:

17 (a) The person has met the requirements of subsections (4)
18 and (5).

19 (b) The person is in compliance with all rules regarding
20 storage facilities promulgated under this part and with all other
21 state laws.

22 (c) The person is in compliance with interim status stan-
23 dards established by federal regulation under title II of the
24 solid waste disposal act.

25 Sec. 6124. Upon receipt of an operating license application
26 meeting the requirements of section 6123, the director or an
27 authorized representative of the director shall inspect the site

1 and determine if the proposed treatment, storage, or disposal
2 facility complies with this part, the rules promulgated under
3 this part, and the stipulations included in the approved treat-
4 ment, storage, or disposal facility construction permit. An
5 inspection report shall be filed in writing by the director or
6 the authorized representative of the director before issuing an
7 operating license and shall be made available for public review.

8 Sec. 6125. (1) The director shall provide notice and an
9 opportunity for a public hearing before making a final decision
10 on an operating license application. The director shall make a
11 final decision on an operating license application within 140
12 days after the director receives a complete application.
13 However, if the state's hazardous waste management program is
14 authorized by the United States environmental protection agency
15 under section 3006 of subtitle C of the solid waste disposal act,
16 Public Law 89-272, 42 U.S.C. 6926, the director may extend the
17 deadline beyond the limitation provided in this section in order
18 to fulfill the public participation requirements of the solid
19 waste disposal act. The operating license may contain stipula-
20 tions specifically applicable to site and operation. A local
21 ordinance, permit, or other requirement shall not prohibit the
22 operation of a licensed treatment, storage, or disposal
23 facility.

24 (2) If any information required to be included in the dis-
25 closure statement required under section 6118 changes, or is
26 supplemented after the filing of the statement, the applicant,

1 permittee, or licensee shall provide that information to the
2 department in writing, within 30 days of the change or addition.

3 (3) The director may deny an operating license application
4 submitted pursuant to section 6123 if there are any listings
5 pursuant to section 6118(4)(b) to (d) which were not identified
6 during the site review board process or were not disclosed as
7 required in section 6123(2) or this section.

8 Sec. 6126. The director shall coordinate and integrate the
9 provisions of this part for purposes of administration and
10 enforcement with appropriate state and federal law. The coordi-
11 nation and integration shall be effected only to the extent that
12 it can be done in a manner consistent with the goals and policies
13 of this part.

14 Sec. 6127. (1) The director shall submit to the legisla-
15 ture, after consultation and participation with the department of
16 public health, rules necessary to implement and administer this
17 part.

18 (2) The director shall submit to the legislature, after con-
19 sultation with the department of public health, rules necessary
20 to implement and administer this part. The rules required to be
21 submitted by this subsection shall include, but not be limited
22 to, requirements for generators, transporters, and treatment,
23 storage, and disposal facilities.

24 (3) The director may promulgate rules that exempt certain
25 hazardous wastes and certain treatment, storage, or disposal
26 facilities from all or portions of the requirements of this part,
27 as necessary to obtain or maintain authorization from the United

1 States environmental protection agency under the solid waste
2 disposal act, or upon a determination by the director that a haz-
3 ardous waste, or a treatment, storage, or disposal facility, is
4 adequately regulated under other state or federal law, and that
5 scientific data supports a conclusion that an exemption will not
6 result in an impairment of the department's ability to protect
7 the public health and the environment. However, an exemption
8 granted pursuant to this subsection shall not result in a level
9 of regulation less stringent than that required under the solid
10 waste disposal act.

11 (4) If an amendment to this part or the rules promulgated
12 under this part subjects a person to a new or different licensing
13 requirement of this part, the director shall promulgate rules to
14 facilitate orderly and reasonable compliance by that person.

15 (5) Changes in the definition of hazardous waste contained
16 in section 6103 and the definition of treatment contained in sec-
17 tion 6104 effected by the 1982 amendatory act that amended former
18 Act No. 64 of the Public Acts of 1979 do not eliminate any exemp-
19 tion provided to any hazardous waste or to any treatment, stor-
20 age, or disposal facility under administrative rules promulgated
21 pursuant to this part before March 30, 1983. However, these
22 exemptions may be modified or eliminated by administrative rules
23 promulgated under this part in order that the state may obtain
24 authorization from the United States environmental protection
25 agency under the solid waste disposal act, or to provide adequate
26 protection to the public health or the environment.

1 Sec. 6128. (1) The director shall submit to the legislature
2 proposed rules listing hazardous waste and other criteria as
3 required by this part. The rules shall state the criteria for
4 identifying the characteristics of hazardous waste and for list-
5 ing the types of hazardous waste, taking into account toxicity,
6 persistence, and degradability in nature, potential for accumula-
7 tion in tissue, and other related factors including flammability,
8 corrosiveness, and other hazardous characteristics. The director
9 shall revise by rule the criteria and listing as necessary. A
10 rule promulgated for the purpose of removing from the list those
11 materials removed from the federal list of regulated materials or
12 removing from management as a hazardous waste those wastes which
13 have been exempted from management under the solid waste disposal
14 act are not required to meet the requirements of sections 41, 42,
15 and 45(2) of the administrative procedures act of 1969, Act
16 No. 306 of the Public Acts of 1969, being sections 24.241,
17 24.242, and 24.245 of the Michigan Compiled Laws.

18 (2) Before the director establishes the list, the department
19 shall hold not less than 3 public hearings in different munici-
20 palities in the state. To ensure consistency between federal and
21 state requirements, this part, the rules promulgated by the
22 department, and the list shall be construed to conform as closely
23 as possible to requirements established under the solid waste
24 disposal act.

25 Sec. 6129. (1) Except as provided in subsections (2) and
26 (3), information obtained by the department under this part is a
27 public record as provided in the freedom of information act, Act

1 No. 442 of the Public Acts of 1976, as amended, being sections
2 15.231 to 15.246 of the Michigan Compiled Laws.

3 (2) A person regulated under this part may designate a
4 record, permit application, other information, or a portion of a
5 record, permit application, or other information furnished to or
6 obtained by the department or its agents, as being only for the
7 confidential use of the department and the board. The department
8 shall notify the regulated person of a request for public records
9 under section 5 of Act No. 442 of the Public Acts of 1976, as
10 amended, being section 15.235 of the Michigan Compiled Laws,
11 whose scope includes information designated as confidential. The
12 person regulated under this part has 30 days after the receipt of
13 the notice to demonstrate to the director that the information
14 designated as confidential should not be disclosed because the
15 information is a trade secret or secret process, or is produc-
16 tion, commercial, or financial information the disclosure of
17 which would jeopardize the competitive position of the person
18 from whom the information was obtained, and make available infor-
19 mation not otherwise publicly available. The director shall
20 grant the request for the information unless the person regulated
21 under this part makes a satisfactory demonstration to the direc-
22 tor that the information should not be disclosed. If there is a
23 dispute between the owner or operator of a treatment, storage, or
24 disposal facility and the person requesting information under Act
25 No. 442 of the Public Acts of 1976, as amended, the commission
26 shall make the decision to grant or deny the request. When the
27 commission makes a decision to grant a request, the information

1 requested shall not be released until 3 days have elapsed after
2 the decision is made.

3 (3) Data on the quantity or composition of hazardous waste
4 generated, transported, treated, stored, or disposed of; air and
5 water emission factors, rates and characterizations; emissions
6 during malfunctions of equipment required under this part on
7 treatment, storage, or disposal facilities; or the efficiency of
8 air and water pollution control devices is not rendered as confi-
9 dential information by this section.

10 (4) The director may release any information obtained under
11 this part, including a record, permit application, or other
12 information considered to be confidential pursuant to subsection
13 (2), to the United States environmental protection agency.

14 Sec. 6130. (1) A person shall not engage in the business of
15 transporting hazardous waste within this state without a hazard-
16 ous waste transporter business license from the director. Any
17 vehicle used to transport hazardous wastes off site shall be
18 licensed under this part. An application for a hazardous waste
19 transporter business license or a vehicle license shall be made
20 on a form provided by the director.

21 (2) An application for a hazardous waste transporter busi-
22 ness license shall be accompanied by:

23 (a) A business license application fee of \$500.00 of which
24 \$100.00 shall be retained as a processing of the application
25 fee. The remaining business license application fee and the
26 vehicle license application fee as required in subdivision (b)
27 shall be refunded if the application is denied by the director.

1 (b) A vehicle license application fee of \$200.00 for each
2 vehicle used by the hazardous waste transporter to transport or
3 carry hazardous waste.

4 (c) Evidence of an inspection certification as may be
5 required by the state fire marshal pursuant to the fire preven-
6 tion code, Act No. 207 of the Public Acts of 1941, being sections
7 29.1 to 29.33 of the Michigan Compiled Laws.

8 (d) Proof of financial responsibility as defined by rule of
9 the director.

10 (3) The license fees collected pursuant to this section
11 shall be deposited in the general fund of the state.

12 Sec. 6131. A hazardous waste transporter business license
13 issued pursuant to section 6130 may include authorization to
14 transport liquid industrial waste for which a license under sec-
15 tion 7106, would otherwise be required. A person having a haz-
16 ardous waste transporter business license which includes authori-
17 zation to transport liquid industrial waste shall be exempt from
18 the business license and surety bond requirements of section
19 7106, but is subject to all other provisions of part 71, and the
20 rules promulgated under that part, including those pertaining to
21 vehicle licensure. In addition to the requirement of section
22 6130 pertaining to a hazardous waste transporter business
23 license, an application filed pursuant to this section shall
24 identify all vehicles to be used for transporting liquid indus-
25 trial waste.

26 Sec. 6132. Upon submission of the hazardous waste
27 transporter business license application, the director shall

1 examine the application to insure that it is complete and
2 accompanied by those items required by section 6130, and shall
3 conduct an inspection to verify that the equipment, location, and
4 methods of the applicant are adequate to effectuate service under
5 this part and the rules promulgated under this part. The direc-
6 tor shall establish, by rule, the inspection standards and
7 requirements. Upon approval of the application, the director
8 shall issue a business license and a vehicle license for each
9 vehicle associated with the service. A business or vehicle
10 license is not transferable from a business or vehicle to another
11 business or vehicle. A vehicle used to transport or carry haz-
12 ardous waste shall carry a license from the director which may be
13 inspected by the director, an authorized representative of the
14 director, or a peace officer.

15 Sec. 6133. (1) A license issued pursuant to section 6132
16 expires 1 year after the date of issuance. Application for
17 renewal of a license shall be made at least 60 days before
18 expiration. The fee for renewal is the same as for an original
19 license.

20 (2) A hazardous waste transporter business license issued
21 under this part shall be revoked if the holder of the license
22 uses a treatment, storage, or disposal facility or vehicle to
23 store, transport, or dispose of hazardous waste contrary to this
24 part or the rules promulgated under this part, and certification
25 is not obtained pursuant to the fire prevention code, Act No. 207
26 of the Public Acts of 1941, being sections 29.1 to 29.33 of the
27 Michigan Compiled Laws.

1 Sec. 6134. A municipality or county shall not prohibit the
2 transportation of hazardous waste through the municipality or
3 county or prevent the ingress and egress into a licensed treat-
4 ment, storage, or disposal facility.

5 Sec. 6135. (1) A hazardous waste generator shall provide a
6 separate manifest to the transporter for each load of hazardous
7 waste transported to property that is not on the site where it
8 was generated. The generator shall include on the manifest
9 details as specified by the director and shall at least include
10 sufficient qualitative and quantitative analysis and physical
11 description to evaluate toxicity and methods of transportation,
12 storage, and disposal. The manifest also shall include safety
13 precautions as necessary for each load of waste. The generator
14 shall submit to the director a copy of the manifest within a
15 period of 10 days after the end of the month for each load of
16 waste transported within that month.

17 (2) The generator shall certify that the information con-
18 tained on the manifest is factual.

19 (3) The specified destination of each load of hazardous
20 waste shall be a designated facility.

21 (4) A generator who does not receive a copy of the manifest
22 with the handwritten signature of the owner or operator of the
23 designated facility within 35 days of the date the waste was
24 accepted by the initial transporter shall contact the transporter
25 to determine the status of the hazardous waste. If the generator
26 is unable to determine the status of the hazardous waste upon
27 contacting the transporter, the generator shall contact the owner

1 or operator of the designated facility to which the waste was to
2 be transported to determine the status of the waste.

3 (5) A generator shall submit an exception report to the
4 director if the generator has not received a copy of the manifest
5 with the handwritten signature of the owner or operator of the
6 designated facility within 45 days of the date the waste was
7 accepted by the initial transporter. The exception report shall
8 include the following:

9 (a) A legible copy of the manifest for which the generator
10 does not have confirmation of delivery.

11 (b) A cover letter signed by the generator or the
12 generator's authorized representative explaining the efforts
13 taken to locate the hazardous waste and the results of those
14 efforts.

15 (6) A generator shall keep a copy of each manifest signed
16 and dated by the initial transporter for 3 years or until the
17 generator receives a signed and dated copy from the owner or
18 operator of the designated facility which received the waste.
19 The generator shall keep the copy of the manifest signed and
20 dated by the owner or operator of the designated facility for 3
21 years. The retention periods required by this subsection shall
22 be automatically extended during the course of any unresolved
23 enforcement action regarding the regulated activity or as
24 required by the director.

25 Sec. 6136. (1) The hazardous waste transporter shall cer-
26 tify acceptance of waste for transportation and shall deliver the

1 hazardous waste and accompanying manifest only to the destination
2 specified by the generator on the manifest.

3 (2) The hazardous waste transporter shall keep a copy of the
4 manifest for a period of 3 years, and shall make it readily
5 available for review and inspection by the director, an autho-
6 rized representative of the director, the director of public
7 health, an authorized representative of the director of public
8 health, a peace officer, or a representative of the United States
9 environmental protection agency. The retention period required
10 by this subsection shall be automatically extended during the
11 course of any unresolved enforcement action regarding the regu-
12 lated activity or as required by the director.

13 Sec. 6137. The treatment, storage, or disposal facility
14 owner or operator shall accept delivery of hazardous waste only
15 if delivery is accompanied by a manifest properly certified by
16 both the generator and the transporter and the treatment, stor-
17 age, or disposal facility is the destination indicated on the
18 manifest. The treatment, storage, or disposal facility owner or
19 operator also shall do all of the following:

20 (a) Certify on the manifest receipt of the hazardous waste
21 and return a signed copy of the manifest to the department within
22 a period of 10 days after the end of the month for all hazardous
23 waste received within that month.

24 (b) Return a signed copy of the manifest to the generator.

25 (c) Keep permanent records pursuant to the rules promulgated
26 by the department.

1 (d) Compile a periodic report of hazardous waste treated,
2 stored, or disposed of as required by the department under rules
3 promulgated by the department.

4 (e) Retain a copy of each manifest and report described in
5 this section for a period of 3 years and make each copy readily
6 available for review and inspection by the director or a desig-
7 nated representative of the director, the director of public
8 health or a designated representative of the director of public
9 health, a peace officer, or a representative of the United States
10 environmental protection agency. The retention period required
11 by this subdivision is automatically extended during the course
12 of any unresolved enforcement action regarding the regulated
13 activity or as required by the director.

14 Sec. 6138. (1) A generator of hazardous waste shall do the
15 following:

16 (a) Compile and maintain information and records regarding
17 the quantities of hazardous waste generated, characteristics and
18 composition of the hazardous waste, and the disposition of haz-
19 ardous waste generated.

20 (b) Utilize proper labeling and containerization of hazard-
21 ous waste as required by the department.

22 (c) Provide for the transport of hazardous waste only by a
23 transporter licensed under this part.

24 (d) Utilize and retain a manifest for each shipment of haz-
25 ardous waste transported to property that is not on site as
26 required by section 6135 and assure that the treatment, storage,

1 or disposal facility to which the waste is transported is a
2 designated facility.

3 (e) Provide the information on the manifest as required
4 under section 6135(1), to each person transporting, treating,
5 storing, or disposing of hazardous waste.

6 (f) Keep all records readily available for review and
7 inspection by the authorized representative of the department or
8 the authorized representative of the department of public health,
9 a peace officer, or a representative of the United States envi-
10 ronmental protection agency.

11 (g) Retain all records for a period of 3 years. The reten-
12 tion period required by this subdivision is automatically
13 extended during the course of any unresolved enforcement action
14 regarding the regulated activity or as required by the director.

15 (h) Compile and submit a periodic report of hazardous waste
16 generated, stored, transferred, treated, disposed of, or trans-
17 ported for treatment, storage, or disposal as required by the
18 department.

19 (2) A generator who also operates a treatment, storage, or
20 disposal facility shall keep records of all hazardous waste
21 produced and treated, stored, or disposed. The generator shall
22 submit a report to the department within a period of 10 days
23 after the end of each month for all waste produced and treated,
24 stored, or disposed.

25 Sec. 6139. (1) As a condition of obtaining an operating
26 license for a disposal facility pursuant to section 6123, the
27 applicant shall demonstrate to the director that the owner of the

1 property has recorded on the deed to the property or some other
2 document that is normally examined during a title search a notice
3 that will notify in perpetuity any potential purchaser of the
4 following:

5 (a) That the property has been used to manage hazardous
6 wastes.

7 (b) That the use of the land should not disturb the final
8 cover, liners, components of any containment system, or the func-
9 tion of the monitoring systems on or in the property.

10 (c) That the survey plat and records of type, location, and
11 quantity of hazardous wastes on or in the property have been
12 filed with the local zoning or land use authority as required by
13 the rules promulgated under this part.

14 (2) As a condition of obtaining an operating license for a
15 landfill pursuant to section 6123, the applicant shall demon-
16 strate to the director that an instrument imposing a restrictive
17 covenant upon the land involved has been executed by all of the
18 owners of the tract of land upon which the landfill is to be
19 located. The instrument imposing the restrictive covenant shall
20 be filed for record by the department in the office of the regis-
21 ter of deeds in the county in which the disposal facility is
22 located. The covenant shall state that the land has been or may
23 be used as a landfill for disposal of hazardous waste and that
24 neither the property owners, agents, or employees, nor any of
25 their heirs, successors, lessees, or assignees shall engage in
26 filling, grading, excavating, building, drilling, or mining on
27 the property following completion of the landfill without

1 authorization of the director. In giving authorization, the
2 director shall consider, at a minimum, the original design, type
3 of operation, hazardous waste deposited, and the state of decom-
4 position of the fill. Before authorizing any activity that would
5 disturb the integrity of the final cover of a landfill, the
6 director must find either that the disturbance of the final cover
7 is necessary to the proposed use of the property and will not
8 increase the potential hazard to human health or the environment
9 or that disturbance of the final cover is necessary to reduce a
10 threat to human health or the environment.

11 Sec. 6140. (1) The owner or operator of a treatment, stor-
12 age, or disposal facility shall submit a closure plan to the
13 director as part of the application for a construction permit
14 under section 6118. In addition, the owner or operator of a dis-
15 posal facility shall submit a postclosure monitoring and mainte-
16 nance plan to the director as part of the application. At a min-
17 imum, the closure plan shall include a description of how the
18 facility shall be closed, possible uses of the land after clo-
19 sure, anticipated time until closure, estimated time for closure,
20 and each anticipated partial closure. Those facilities described
21 in section 6116 shall submit a closure and, where required by
22 rule, a postclosure plan with their operating license
23 application.

24 (2) The director shall promulgate rules regarding notifica-
25 tion before closure, length of time permitted for closure of the
26 treatment, storage, or disposal facility, removal and
27 decontamination of equipment, security, groundwater and leachate

1 monitoring system, sampling analysis and reporting requirements,
2 and any other pertinent requirements.

3 Sec. 6141. An owner or operator of a treatment, storage, or
4 disposal facility shall file as a part of the application for a
5 license to operate, a surety bond or other suitable instrument or
6 mechanism, or establish a secured trust fund, as approved by the
7 director, to cover the cost of closing the treatment, storage, or
8 disposal facility after its capacity is reached or operations
9 have otherwise terminated. In addition, the owner or operator of
10 a disposal facility shall also file a surety bond or other suit-
11 able instrument or mechanism, or establish a secured trust fund,
12 approved by the director, to cover the cost of postclosure moni-
13 toring and maintenance of the facility. An owner or operator may
14 use a combination of bonds, instruments, mechanisms, or funds, as
15 approved by the director, to satisfy the requirements of this
16 section. The bond, instrument, mechanism, or fund, or combina-
17 tion of these methods of assurance, shall be in an amount equal
18 to a reasonable estimate of the cost required to adequately close
19 the facility, based on the level of operations proposed in the
20 operating license application, and, with respect to a disposal
21 facility, to monitor and maintain the site for a period of at
22 least 30 years. The bond, instrument, mechanism, or fund, or the
23 combination of these methods of assurance, shall be adjusted
24 periodically as determined by rule to account for inflation or
25 changes in the permitted level of operations. Failure to main-
26 tain the bond, instrument, mechanism, or fund, or combination of

1 these methods of assurance, constitutes a violation of this
2 part.

3 Sec. 6142. The disposal facility trust fund created on
4 January 1, 1980 is abolished. Any funds collected by the depart-
5 ment before March 30, 1983 shall be returned to the owner or
6 operator of a disposal facility from whom the funds were
7 collected. However, if the owner or operator directly surcharged
8 another person and forwarded the fees to the department, the
9 funds collected by the department shall be refunded directly to
10 the person who was surcharged upon providing proof and documen-
11 tation satisfactory to the department.

12 Sec. 6143. (1) There is created within the state treasury a
13 hazardous waste service fund of not less than \$1,000,000.00 to be
14 financed by appropriations for the following uses:

15 (a) For hazardous waste emergencies as defined by rule.

16 (b) For use in insuring the closure and post closure moni-
17 toring and maintenance of treatment, storage, or disposal
18 facilities.

19 (2) The director or an authorized representative of the
20 director shall administer the fund and authorize expenditures
21 upon a finding of actual or potential environmental damage caused
22 by hazardous waste or when the owner or operator of the treat-
23 ment, storage, or disposal facility is not fulfilling his or her
24 obligation in regard to closure or post closure monitoring and
25 maintenance of the site and the surety bond, instrument, mecha-
26 nism, or secured trust fund maintained by the owner or operator

1 of a treatment, storage, or disposal facility as required by
2 section 6141 is inadequate or is no longer in effect.

3 (3) After an expenditure from the fund, the director immedi-
4 ately shall request the attorney general to begin proceedings to
5 recover any expenditure from the fund from the person responsible
6 for the hazardous waste emergency or the owner or operator of a
7 treatment, storage, or disposal facility who is not fulfilling
8 his or her obligation in regard to closure or post closure moni-
9 toring and maintenance of a facility. If the owner of the prop-
10 erty refuses to pay expenses incurred, the expenses shall be
11 assessed against the property and shall be collected and treated
12 in the same manner as taxes assessed under the laws of the
13 state.

14 (4) The director shall promulgate rules to define a hazard-
15 ous waste emergency and to establish the method of payment from
16 the fund.

17 Sec. 6144. (1) The director or an authorized representative
18 shall inspect and file a written report not less than 4 times per
19 year for each licensed treatment, storage, and disposal
20 facility.

21 (2) A person may register with the director a complaint or
22 allegation of improper action or violation of this part, a rule,
23 or a condition of the license to operate a treatment, storage, or
24 disposal facility or transporting vehicle.

25 (3) Upon receipt of a complaint or allegation from a munici-
26 pality the director shall make a record of the complaint and
27 shall order an inspection of the treatment, storage, or disposal

1 facility, transporting vehicle, or other location of alleged
2 violation to investigate the complaint or allegation within not
3 more than 5 business days after receipt of the complaint or
4 allegation. If a complaint or allegation is of a highly serious
5 nature, as determined by the director, the facility or transport-
6 ing vehicle shall be inspected as quickly as possible.

7 (4) Following an investigation of a complaint or allegation
8 under subsection (3), the director shall make a written report to
9 the municipality within 15 days.

10 (5) A person who has knowledge that hazardous waste is being
11 treated, disposed of, or stored in violation of this part shall
12 notify the director. A person who has knowledge that an emer-
13 gency situation exists shall notify the director, the department
14 of public health, and the state toxic substance control
15 commission.

16 Sec. 6145. (1) The department may certify a city, county,
17 or district health department to administer and enforce portions
18 of this part but only to an extent consistent with obtaining and
19 maintaining authorization of the state's hazardous waste manage-
20 ment program pursuant to section 3006 of subtitle C of the solid
21 waste disposal act, title II of Public Law 89-272, 42
22 U.S.C. 6926. Certification procedures shall be established by
23 the department by rule. The director may rescind certification
24 upon the request of the certified city, county, or district
25 health department, or after reasonable notice and hearing, if the
26 director finds that a certified health department is not
27 administering and enforcing this part as required.

1 (2) In order for a certified health department to carry out
2 the responsibilities authorized under this part, an annual grant
3 shall be appropriated by the legislature from the general fund of
4 the state to provide financial assistance to each certified
5 health department. A certified health department shall be eligi-
6 ble to receive 100% of its reasonable costs as determined by the
7 department based on criteria established by rule. The director
8 shall promulgate rules for distribution of the appropriated
9 funds.

10 Sec. 6146. (1) Any person who generates, stores, treats,
11 transports, disposes of, or otherwise handles or has handled haz-
12 ardous waste shall furnish information relating to the hazardous
13 wastes, or permit access to and copying of all records relating
14 to the hazardous wastes, or both, if the information and records
15 are required to be kept under this part or the rules promulgated
16 under this part, upon a request of the director or an authorized
17 representative of the director, made for the purpose of develop-
18 ing a rule or enforcing or administering this part or a rule
19 promulgated under this part. This subsection does not limit the
20 director's authority to pursue appropriate court authorization in
21 order to obtain information pertaining to enforcement actions
22 under this part.

23 (2) The director or an authorized representative of the
24 director may enter at reasonable times any treatment, storage, or
25 disposal facility or other place where hazardous wastes are or
26 have been generated, stored, treated, disposed of, or transported
27 from and may inspect the facility or other place and obtain from

1 any person samples of the hazardous wastes and samples of the
2 containers or labeling of the wastes for the purpose of develop-
3 ing a rule or enforcing or administering this part or a rule
4 promulgated under this part.

5 (3) If the director, an authorized representative of the
6 director, or a law enforcement official has probable cause to
7 believe that a person is violating this part or a rule promul-
8 gated under this part, the director or law enforcement official
9 may search without a warrant a vehicle or equipment that is pos-
10 sessed, used, or operated by that person. The director, an
11 authorized representative of the director, or a law enforcement
12 official may seize a vehicle, equipment, or other property used
13 or operated in a manner or for a purpose contrary to this part or
14 a rule promulgated under this part. The director shall request
15 that the attorney general petition the circuit court for the
16 county of Ingham or the county where the violation occurred for
17 permission to preserve the property as evidence to prosecute the
18 violation or alternatively shall file an appropriate action to
19 condemn the property.

20 Sec. 6147. A person who violates this part by failing to
21 carry a hazardous waste transporter vehicle license in a vehicle,
22 who transfers a business or vehicle license in violation of sec-
23 tion 6132, or who violates rules promulgated pursuant to section
24 6132 is guilty of a misdemeanor, punishable by imprisonment for
25 not more than 90 days, or a fine of not more than \$500.00, or
26 both, for each violation. A law enforcement officer or a
27 conservation officer may issue an appearance ticket to a person

1 who is in violation of this section, section 6132, or the rules
2 promulgated pursuant to section 6132.

3 Sec. 6148. (1) Subject to subsection (2), upon receipt of
4 information that the storage, transportation, treatment, or dis-
5 posal of hazardous waste may present an imminent and substantial
6 hazard to the health of persons or to the natural resources, or
7 is endangering or causing damage to public health or the environ-
8 ment, the director, after consultation with the director of
9 public health or a designated representative of the director of
10 public health, shall take 1 or more of the following actions:

11 (a) Issue an order directing the owner or operator of the
12 treatment, storage, or disposal facility, the generator, the
13 transporter, or the custodian of the hazardous waste which con-
14 stitutes the hazard, to take the steps necessary to prevent the
15 act or eliminate the practice which constitutes the hazard. The
16 order may include permanent or temporary cessation of the opera-
17 tion of a treatment, storage, or disposal facility, generator, or
18 transporter. An order issued under this subdivision may be
19 issued without prior notice or hearing and shall be complied with
20 immediately. An order issued under this subdivision shall not
21 remain in effect more than 7 days without affording the owner or
22 operator or custodian an opportunity for a hearing. In issuing
23 an order calling for corrective action, the department shall
24 specify the precise nature of the corrective action necessary and
25 the specific time limits for performing the corrective action.
26 If corrective action is not completed within the time limit
27 specified and pursuant to the department's requirements, the

1 director shall issue a cease and desist order against the owner
2 or operator of the treatment, storage, or disposal facility, gen-
3 erator, or transporter and initiate action to revoke the operat-
4 ing or transporter's license and take appropriate action.

5 (b) Request that the attorney general commence an action to
6 enjoin the act or practice and obtain injunctive relief upon a
7 showing by the department that a person has engaged in the pro-
8 hibited act or practice.

9 (c) Revoke a permit, license, or construction permit after
10 reasonable notice and hearing pursuant to the administrative pro-
11 cedures act of 1969, Act No. 306 of the Public Acts of 1969,
12 being sections 24.201 to 24.328 of the Michigan Compiled Laws, if
13 the director finds that a treatment, storage, or disposal facil-
14 ity or transporting vehicle is not, or has not been, constructed
15 or operated pursuant to the approved plans or this part and the
16 rules promulgated under this part, or the conditions of a license
17 or construction permit.

18 (2) A determination of an instance of imminent and substan-
19 tial hazard to the health of persons shall be made by the direc-
20 tor of public health.

21 Sec. 6149. A person who willfully tears down, removes, or
22 destroys any sign or notice warning of the presence of hazardous
23 waste or marking the boundaries of a hazardous waste treatment,
24 storage, or disposal facility is guilty of a misdemeanor, punish-
25 able by imprisonment for not more than 90 days, or a fine of not
26 more than \$500.00, or both.

1 Sec. 6150. (1) Upon receipt and verification of information
2 that a licensed storage, treatment, or disposal facility does not
3 have or has not maintained a suitable instrument or mechanism
4 required under section 6141, or that the hazardous waste at the
5 licensed facility exceeds the maximum quantities allowed under
6 the storage, treatment, or disposal facility's license issued
7 under this part, the director may issue an order of noncompliance
8 directing the owner or operator of the storage, treatment, or
9 disposal facility to take steps to eliminate the act or practice
10 that results in a violation listed in this section. An order
11 issued pursuant to this section shall specify the corrective
12 action necessary and may order a licensed facility that has
13 exceeded the maximum quantities of hazardous waste allowed under
14 the terms of the facility's license to cease receiving hazardous
15 waste. The order shall specify the time limit in which correc-
16 tive action must be completed. If a licensed storage, treatment,
17 or disposal facility comes into compliance with this part follow-
18 ing the issuance of an order of noncompliance, the director shall
19 send written verification of compliance to the owner or operator
20 of the facility.

21 (2) An order of noncompliance issued pursuant to subsection
22 (1) that requires a licensed facility to reduce the quantity of
23 hazardous waste on site and to cease receiving hazardous waste
24 shall not remain in effect for more than 7 days without affording
25 the owner or operator an opportunity for a hearing. If the order
26 remains in effect following the hearing, or if the owner or
27 operator of the facility waives his or her right to a hearing,

1 the owner or operator shall cooperate with the department in
2 developing and implementing a compliance plan to reduce the
3 amount of hazardous waste at the facility. If the director or an
4 authorized representative of the director determines that the
5 owner or operator has failed to make reasonable and continuous
6 efforts to comply with the order of noncompliance and the result-
7 ing compliance plan, the director may issue an order suspending
8 or restricting the facility's license pursuant to the administra-
9 tive procedures act of 1969, Act No. 306 of the Public Acts of
10 1969, being sections 24.201 to 24.328 of the Michigan Compiled
11 Laws. An order provided for in this subsection that suspends or
12 restricts a license following the licensed facility's failure to
13 comply with an order of noncompliance provided for in this sec-
14 tion shall not remain in effect for more than 7 days without
15 affording the owner or operator of the facility an opportunity
16 for a hearing to contest the suspension or restriction.

17 (3) If the owner or operator of a storage, treatment, or
18 disposal facility receives an order of noncompliance issued pur-
19 suant to subsection (1) for failing to maintain a suitable
20 instrument or mechanism required under section 6141 and does not
21 make reasonable efforts to comply with the order of noncompli-
22 ance, the director may issue an order suspending or restricting
23 the facility's license pursuant to Act No. 306 of the Public Acts
24 of 1969. An order provided for in this subsection that suspends
25 or restricts a license following the licensed facility's failure
26 to comply with an order of noncompliance provided for in this
27 section, shall not remain in effect for more than 7 days without

1 affording the owner or operator of the facility an opportunity
2 for a hearing to contest the suspension or restriction.

3 (4) Upon receipt and verification that a storage, treatment,
4 or disposal facility has not maintained a suitable instrument or
5 mechanism required under section 6141, or that hazardous waste at
6 a licensed facility exceeds the maximum quantities allowed under
7 the facility's license and the owner or operator of the facility
8 has previously been issued an order of noncompliance under this
9 section, the director or an authorized representative of the
10 director may do either of the following:

11 (a) Issue a second or subsequent order of noncompliance and
12 proceed in the manner provided for in subsection (2) or (3).

13 (b) Initiate an action to suspend or restrict the facility's
14 license or permit pursuant to Act No. 306 of the Public Acts of
15 1969, without first issuing an order of noncompliance.

16 Sec. 6151. (1) If the director finds that a person is in
17 violation of a permit, license, rule promulgated under this part,
18 or requirement of this part, the director may issue an order
19 requiring the person to comply with the permit, license, rule, or
20 requirement of this part. The attorney general or a person may
21 commence a civil action against a person, the department, or a
22 health department certified under section 6145 for appropriate
23 relief, including injunctive relief for a violation of this part
24 or a rule promulgated under this part. An action under this sub-
25 section may be brought in the circuit court for the county of
26 Ingham or for the county in which the defendant is located,
27 resides, or is doing business. The court has jurisdiction to

1 restrain the violation and to require compliance. In addition to
2 any other relief granted under this subsection, the court may
3 impose a civil fine of not more than \$25,000.00 for each instance
4 of violation and, if the violation is continuous, for each day of
5 continued noncompliance. A fine collected under this subsection
6 shall be deposited in the general fund of the state.

7 (2) A person who transports, treats, stores, disposes, or
8 generates hazardous waste in violation of this part, or contrary
9 to a permit, order, or rule issued or promulgated under this
10 part, or who makes a false statement, representation, or certifi-
11 cation in an application for, or form pertaining to a permit, or
12 in a notice or report required by the terms and conditions of an
13 issued permit, or a person who violates section 6144(5), is
14 guilty of a misdemeanor, punishable by a fine of not more than
15 \$25,000.00 for each instance of violation and, if the violation
16 is continuous, for each day of violation, or imprisonment for not
17 more than 1 year, or both. If the conviction is for a violation
18 committed after a first conviction of the person under this sub-
19 section, the person is guilty of a misdemeanor, punishable by a
20 fine of not more than \$50,000.00 for each instance of violation
21 and, if the violation is continuous, for each day of violation,
22 or by imprisonment for not more than 2 years, or both.

23 (3) Any person who knowingly stores, treats, transports, or
24 disposes of any hazardous waste in violation of subsection (2)
25 and who knows at that time that he or she thereby places another
26 person in imminent danger of death or serious bodily injury, and
27 if his or her conduct in the circumstances manifests an

1 unjustified and inexcusable disregard for human life, or if his
2 or her conduct in the circumstances manifests an extreme indif-
3 ference for human life, is subject, upon conviction, to a fine of
4 not more than \$250,000.00 or imprisonment for not more than 2
5 years, or both, except that any person whose actions constitute
6 an extreme indifference for human life, upon conviction, is
7 subject to a fine of not more than \$250,000.00 or imprisonment
8 for not more than 5 years, or both. A defendant that is not an
9 individual and not a governmental entity, upon conviction, is
10 subject to a fine of not more than \$1,000,000.00.

11 (4) For the purposes of subsection (3), a person's state of
12 mind is knowing with respect to:

13 (a) His or her conduct, if he or she is aware of the nature
14 of his or her conduct.

15 (b) An existing circumstance, if he or she is aware or
16 believes that the circumstance exists.

17 (c) A result of his or her conduct, if he or she is aware or
18 believes that his or her conduct is substantially certain to
19 cause danger of death or serious bodily injury.

20 (5) For purposes of subsection (3), in determining whether a
21 defendant who is an individual knew that his or her conduct
22 placed another person in imminent danger of death or serious
23 bodily injury, both of the following apply:

24 (a) The person is responsible only for actual awareness or
25 actual belief that he or she possessed.

26 (b) Knowledge possessed by a person other than the defendant
27 but not by the defendant himself or herself may not be attributed

1 to the defendant. However, in proving the defendant's possession
2 of actual knowledge, circumstantial evidence may be used, includ-
3 ing evidence that the defendant took affirmative steps to shield
4 himself or herself from relevant information.

5 (6) It is an affirmative defense to a prosecution under this
6 part that the conduct charged was consented to by the person
7 endangered and that the danger and conduct charged were reason-
8 ably foreseeable hazards of either of the following:

9 (a) An occupation, a business, or a profession.

10 (b) Medical treatment or professionally approved methods and
11 the other person had been made aware of the risks involved prior
12 to giving consent.

13 (7) The defendant may establish an affirmative defense under
14 subsection (6) by a preponderance of the evidence.

15 (8) For purposes of subsection (3), "serious bodily injury"
16 means each of the following:

17 (a) Bodily injury which involves a substantial risk of
18 death.

19 (b) Unconsciousness.

20 (c) Extreme physical pain.

21 (d) Protracted and obvious disfigurement.

22 (e) Protracted loss or impairment of the function of a
23 bodily member, organ, or mental faculty.

24 (9) In addition to a fine, the attorney general may bring an
25 action in a court of competent jurisdiction to recover the full
26 value of the damage done to the natural resources of this state
27 and the costs of surveillance and enforcement by the state

1 resulting from the violation. The damages and cost collected
2 under this subsection shall be deposited in the general fund when
3 the damages or costs result from impairment or destruction of the
4 fish, wildlife, or other natural resources of the state and shall
5 be used to restore, rehabilitate, or mitigate the damage to,
6 those resources in the affected area, and for the specific
7 resource to which the damages occurred.

8 (10) The court, in issuing a final order in an action
9 brought under this part, may award costs of litigation, including
10 reasonable attorney and expert witness fees to a party, if the
11 court determines that the award is appropriate.

12 (11) A person who has an interest that is or may be affected
13 by a civil or administrative action commenced under this part has
14 a right to intervene in that action.

15 Sec. 6152. The department shall encourage interstate and
16 international cooperation for the improved management of hazard-
17 ous waste; for improved, and so far as is practicable, uniform
18 state laws relating to the management of hazardous waste; and
19 compacts between this and other states for the improved manage-
20 ment of hazardous waste.

21 PART 63 SOLID WASTE MANAGEMENT

22 Sec. 6301. For purposes of this part, the words and phrases
23 defined in sections 6302 to 6306 shall have the meanings ascribed
24 to them in those sections.

25 Sec. 6302. (1) "Applicant" includes any person.

1 (2) "Ashes" means the residue from the burning of wood,
2 coal, coke, refuse, wastewater sludge, or other combustible
3 materials.

4 (3) "Bond" means a surety bond from a surety company autho-
5 rized to transact business in this state, a certificate of depos-
6 it, a cash bond, or an irrevocable letter of credit, in favor of
7 the director.

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

12 (5) "Coal or wood ash" means either or both of the
13 following:

14 (a) The residue remaining after the ignition of coal or
15 wood, or both, and may include noncombustible materials, other-
16 wise referred to as bottom ash.

17 (b) The airborne residues from burning coal or wood, or
18 both, that are finely divided particles entrained in flue gases
19 arising from a combustion chamber, otherwise referred to as fly
20 ash.

21 (6) "Collection center" means a tract of land, building,
22 unit, or appurtenance or combination thereof that is used to col-
23 lect junk motor vehicles and farm implements under section 6330.

24 Sec. 6303. (1) "Discharge" includes, but is not limited to,
25 any spilling, leaking, pumping, pouring, emitting, emptying, dis-
26 charging, injecting, escaping, leaching, dumping, or disposing of

1 a substance into the environment which is or may become injurious
2 to the public health, safety, or welfare, or to the environment.

3 (2) "Disposal area" means a solid waste transfer facility,
4 incinerator, sanitary landfill, processing plant, or other solid
5 waste handling or disposal facility utilized in the disposal of
6 solid waste.

7 (3) "Enforceable mechanism" means a legal method whereby the
8 state, a county, a municipality, or a person is authorized to
9 take action to guarantee compliance with an approved county solid
10 waste management plan. Enforceable mechanisms include contracts,
11 intergovernmental agreements, laws, ordinances, rules, and
12 regulations.

13 (4) "Garbage" means rejected food wastes including waste
14 accumulation of animal, fruit, or vegetable matter used or
15 intended for food or that attends the preparation, use, cooking,
16 dealing in, or storing of meat, fish, fowl, fruit, or vegetable.

17 Sec. 6304. (1) "Health officer" means a full-time adminis-
18 trative officer of a certified city, county, or district depart-
19 ment of health.

20 (2) "Inert material" means a substance that will not decom-
21 pose, dissolve, or in any other way form a contaminated leachate
22 upon contact with water, or other liquids determined by the
23 director as likely to be found at the disposal area, percolating
24 through the substance.

25 (3) "Landfill" means a disposal area that is a sanitary
26 landfill.

1 (4) "Medical waste" means that term as it is defined in
2 part 138 of the public health code, Act No. 368 of the Public
3 Acts of 1978, being sections 333.13801 to 333.13831 of the
4 Michigan Compiled Laws.

5 (5) "Municipal solid waste incinerator" means an incinerator
6 that is owned or operated by any person, and meets all of the
7 following requirements:

8 (a) The incinerator receives solid waste from off site and
9 burns only household waste from single and multiple dwellings,
10 hotels, motels, and other residential sources, or this household
11 waste together with solid waste from commercial, institutional,
12 municipal, county, or industrial sources that, if disposed of,
13 would not be required to be placed in a disposal facility
14 licensed under part 61.

15 (b) The incinerator has established contractual requirements
16 or other notification or inspection procedures sufficient to
17 assure that the incinerator receives and burns only waste
18 referred to in subdivision (a).

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

21 (d) The incinerator is not an industrial furnace as defined
22 in 40 C.F.R. 260.10.

23 (e) The incinerator is not an incinerator that receives and
24 burns only medical waste, or only waste produced at 1 or more
25 hospitals.

1 (6) "Municipal solid waste incinerator ash" means the
2 substances remaining after combustion in a municipal solid waste
3 incinerator.

4 (7) "Municipality" means a city, township, or village.

5 (8) "Perpetual care fund" means a perpetual care fund pro-
6 vided for in section 6325.

7 Sec. 6305. (1) "Recyclable materials" means source sepa-
8 rated materials, site separated materials, high grade paper,
9 glass, metal, plastic, aluminum, newspaper, corrugated paper,
10 yard clippings, and other materials that may be recycled or
11 composted.

12 (2) "Regional solid waste management planning agency" means
13 the regional solid waste planning agency designated by the gover-
14 nor pursuant to section 4006 of subtitle D of the solid waste
15 disposal act, title II of Public Law 89-272, 42 U.S.C. 6946.

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

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

26 (5) "Rubbish" means nonputrescible solid waste, excluding
27 ashes, consisting of both combustible and noncombustible waste,

1 including paper, cardboard, metal containers, yard clippings,
2 wood, glass, bedding, crockery, demolished building materials, or
3 litter of any kind that may be a detriment to the public health
4 and safety.

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

7 (7) "Site separated material" means glass, metal, wood,
8 paper products, plastics, rubber, textiles, garbage, yard clip-
9 pings, or any other material approved by the director that is
10 separated from solid waste for the purpose of conversion into raw
11 materials or new products. Site separated material does not
12 include the residue remaining after glass, metal, wood, paper
13 products, plastics, rubber, textiles, or any other material
14 approved by the director is separated from solid waste.

15 (8) "Slag" means the nonmetallic product resulting from
16 melting or smelting operations for iron or steel.

17 Sec. 6306. (1) "Solid waste" means garbage, rubbish, ashes,
18 incinerator ash, incinerator residue, street cleanings, municipal
19 and industrial sludges, solid commercial and solid industrial
20 waste, and animal waste other than organic waste generated in the
21 production of livestock and poultry. Solid waste does not
22 include the following:

23 (a) Human body waste.

24 (b) Organic waste generated in the production of livestock
25 and poultry.

26 (c) Liquid waste.

1 (d) Ferrous or nonferrous scrap directed to a scrap metal
2 processor or to a reuser of ferrous or nonferrous products.

3 (e) Slag or slag products directed to a slag processor or to
4 a reuser of slag or slag products.

5 (f) Sludges and ashes managed as recycled or nondetrimental
6 materials appropriate for agricultural or silvicultural use pur-
7 suant to a plan approved by the director.

8 (g) Materials approved for emergency disposal by the
9 director.

10 (h) Source separated materials.

11 (i) Site separated material.

12 (j) Fly ash or any other ash produced from the combustion of
13 coal, when used in the following instances:

14 (i) With a maximum of 6% of unburned carbon as a component
15 of concrete, grout, mortar, or casting molds.

16 (ii) With a maximum of 12% unburned carbon passing
17 M.D.O.T. test method MTM 101 when used as a raw material in
18 asphalt for road construction.

19 (iii) As aggregate, road, or building material that in ulti-
20 mate use will be stabilized or bonded by cement, limes, or
21 asphalt.

22 (iv) As a road base or construction fill that is covered
23 with asphalt, concrete, or other material approved by the direc-
24 tor and which is placed at least 4 feet above the seasonal
25 groundwater table.

26 (v) As the sole material in a depository designed to
27 reclaim, develop, or otherwise enhance land, subject to the

1 approval of the director. In evaluating the site, the director
2 shall consider the physical and chemical properties of the ash
3 including leachability, and the engineering of the depository,
4 including, but not limited to, the compaction, control of surface
5 water and groundwater that may threaten to infiltrate the site,
6 and evidence that the depository is designed to prevent water
7 percolation through the material.

8 (k) Other wastes regulated by statute.

9 (2) "Solid waste hauler" means a person who owns or operates
10 a solid waste transporting unit.

11 (3) "Solid waste processing plant" means a tract of land,
12 building, unit, or appurtenance of a building or unit or a combi-
13 nation of land, buildings, and units that is used or intended for
14 use for the processing of solid waste or the separation of mate-
15 rial for salvage or disposal, or both, but does not include a
16 plant engaged primarily in the acquisition, processing, and ship-
17 ment of ferrous or nonferrous metal scrap, or a plant engaged
18 primarily in the acquisition, processing, and shipment of slag or
19 slag products.

20 (4) "Solid waste transporting unit" means a container that
21 may be an integral part of a truck or other piece of equipment
22 used for the transportation of solid waste.

23 (5) "Solid waste transfer facility" means a tract of land, a
24 building and any appurtenances, or a container, or any combina-
25 tion of land, buildings, or containers that is used or intended
26 for use in the rehandling or storage of solid waste incidental to

1 the transportation of the solid waste, but is not located at the
2 site of generation or the site of disposal of the solid waste.

3 (6) "Source separated material," means glass, metal, wood,
4 paper products, plastics, rubber, textiles, garbage, yard clip-
5 pings, or any other material approved by the director that is
6 separated at the source of generation for the purpose of conver-
7 sion into raw materials or new products.

8 (7) "Yard clippings" means leaves, grass clippings, vegeta-
9 ble or other garden debris, shrubbery, or brush or tree trimmings
10 less than 4 feet in length and 2 inches in diameter, that can be
11 converted to compost humus. This term does not include stumps,
12 agricultural wastes, animal waste, roots, sewage sludge, or
13 garbage.

14 Sec. 6307. (1) The department and a health officer shall
15 assist in developing and encouraging methods for the disposal of
16 solid waste that are environmentally sound, that maximize the
17 utilization of valuable resources, and that encourage resource
18 conservation including source reduction and source separation.

19 (2) This part shall be construed and administered to encour-
20 age and facilitate the effort of all persons to engage in source
21 separation and site separation of material from solid waste, and
22 other environmentally sound measures to prevent materials from
23 entering the waste stream or which encourage the removal of mate-
24 rials from the waste stream.

25 (3) The director may exempt from regulation under this part
26 solid waste that is determined by the director to be inert
27 material for uses and in a manner approved by the director.

1 Sec. 6308. A city, county, or district health department
2 may be certified by the director to perform a solid waste manage-
3 ment program. Certification procedures shall be established by
4 the director by rule. The director may rescind certification
5 upon request of the certified health department or after reason-
6 able notice and hearing if the director finds that a certified
7 health department is not performing the program as required.

8 Sec. 6309. (1) Except as otherwise provided in section
9 6329, a person otherwise allowed under this part to own or oper-
10 ate a solid waste disposal area shall not establish a disposal
11 area without a construction permit from the director, contrary to
12 an approved solid waste management plan, or contrary to a permit,
13 license, or final order issued pursuant to this part. A person
14 proposing the establishment of a disposal area shall make appli-
15 cation for a construction permit to the director through the
16 health officer on a form provided by the director. If the dis-
17 posal area is located in a county or city that does not have a
18 certified health department, the application shall be made
19 directly to the director.

20 (2) The application for a construction permit shall contain
21 the name and residence of the applicant, the location of the pro-
22 posed disposal area, and other information considered necessary
23 by the director. The application shall be accompanied by an
24 engineering plan and a construction permit application fee. A
25 construction application permit fee for a landfill shall be
26 accompanied by a fee in an amount that is the sum of all of the
27 applicable fees in this subsection:

- 1 (a) For a permitted site size of the following:
- 2 (i) Less than 5 acres:
- 3 (A) \$100.00 for a new permit application.
- 4 (B) \$25.00 for a renewal permit application.
- 5 (ii) 5 to 19 acres:
- 6 (A) \$170.00 for a new permit application.
- 7 (B) \$100.00 for a renewal permit application.
- 8 (iii) 20 to 79 acres:
- 9 (A) \$240.00 for a new permit application.
- 10 (B) \$150.00 for a renewal permit application.
- 11 (iv) 80 acres or more:
- 12 (A) \$320.00 for a new permit application.
- 13 (B) \$230.00 for a renewal permit application.
- 14 (b) For the estimated solid waste volume per day:
- 15 (i) Less than 50 cubic yards:
- 16 (A) \$60.00 for a new permit application.
- 17 (B) \$15.00 for a renewal permit application.
- 18 (ii) 50 to 100 cubic yards:
- 19 (A) \$80.00 for a new permit application.
- 20 (B) \$30.00 for a renewal permit application.
- 21 (iii) 101 to 700 cubic yards:
- 22 (A) \$100.00 for a new permit application.
- 23 (B) \$50.00 for a renewal permit application.
- 24 (iv) More than 700 cubic yards:
- 25 (A) \$130.00 for a new permit application.
- 26 (B) \$100.00 for a renewal permit application.

- 1 (c) For the nature of the solid waste:
- 2 (i) Residential:
- 3 (A) \$100.00 for a new permit application.
- 4 (B) \$50.00 for a renewal permit application.
- 5 (ii) Industrial or combination residential and industrial:
- 6 (A) \$125.00 for a new permit application.
- 7 (B) \$75.00 for a renewal permit application.
- 8 (d) For hydrogeological characteristics:
- 9 (i) Natural soil:
- 10 (A) \$40.00 for a new permit application.
- 11 (B) \$10.00 for a renewal permit application.
- 12 (ii) Compacted clay:
- 13 (A) \$70.00 for a new permit application.
- 14 (B) \$30.00 for a renewal permit application.
- 15 (iii) Synthetic liner:
- 16 (A) \$100.00 for a new permit application.
- 17 (B) \$70.00 for a renewal permit application.
- 18 (3) The application for a construction permit for a solid
- 19 waste transfer facility or a solid waste processing plant shall
- 20 be accompanied by a fee in an amount that is the sum of all of
- 21 the applicable fees in this subsection:
- 22 (a) For a permitted site size of the following:
- 23 (i) Less than 5 acres:
- 24 (A) \$50.00 for a new permit application.
- 25 (B) \$15.00 for a renewal permit application.
- 26 (ii) 5 acres or more:

- 1 (A) \$100.00 for a new permit application.
- 2 (B) \$75.00 for a renewal permit application.
- 3 (b) For a building size of the following:
- 4 (i) Less than 500 square feet:
- 5 (A) \$50.00 for a new permit application.
- 6 (B) \$20.00 for a renewal permit application.
- 7 (ii) 500 to 1,000 square feet:
- 8 (A) \$100.00 for a new permit application.
- 9 (B) \$60.00 for a renewal permit application.
- 10 (iii) More than 1,000 square feet:
- 11 (A) \$150.00 for a new permit application.
- 12 (B) \$100.00 for a renewal permit application.
- 13 (c) For the nature of the solid waste:
- 14 (i) Residential:
- 15 (A) \$100.00 for a new permit application.
- 16 (B) \$30.00 for a renewal permit application.
- 17 (ii) Industrial or combination residential and industrial:
- 18 (A) \$150.00 for a new permit application.
- 19 (B) \$90.00 for a renewal permit application.
- 20 (d) For site characteristics:
- 21 (i) High site that is dry which has no groundwater or sur-
- 22 face water problems:
- 23 (A) \$50.00 for a new permit application.
- 24 (B) \$10.00 for a renewal permit application.
- 25 (ii) Surface water on site:
- 26 (A) \$75.00 for a new permit application.

- 1 (B) \$30.00 for a renewal permit application.
- 2 (e) For the estimated solid waste volume per day:
- 3 (i) Less than 50 cubic yards:
- 4 (A) \$50.00 for a new permit application.
- 5 (B) \$25.00 for a renewal permit application.
- 6 (ii) 50 to 500 cubic yards:
- 7 (A) \$100.00 for a new permit application.
- 8 (B) \$75.00 for a renewal permit application.
- 9 (iii) More than 500 cubic yards:
- 10 (A) \$150.00 for a new permit application.
- 11 (B) \$125.00 for a renewal permit application.
- 12 (4) An applicant for a construction permit, within 6 months
- 13 after a permit denial, may resubmit the application, together
- 14 with the additional information as needed to address the reasons
- 15 for denial, without being required to pay an additional applica-
- 16 tion fee.
- 17 Sec. 6310. (1) Before the submission of a construction
- 18 permit application for a new disposal area, the applicant shall
- 19 request a health officer or the director to provide an advisory
- 20 analysis of the proposed disposal area. However, the applicant,
- 21 not less than 15 days after the request, and notwithstanding an
- 22 analysis result, may file an application for a construction
- 23 permit.
- 24 (2) Upon receipt of a construction permit application, the
- 25 director or an authorized representative of the director shall do
- 26 all of the following:

1 (a) Immediately notify the clerk of the municipality in
2 which the disposal area is located or proposed to be located, the
3 local soil erosion and sedimentation control agency, each divi-
4 sion within the department that has responsibilities in land,
5 air, or water management, and the designated regional solid waste
6 management planning agency.

7 (b) Publish a notice in a newspaper having major circulation
8 in the vicinity of the proposed disposal area. The required pub-
9 lished notice shall contain a map indicating the location of the
10 proposed disposal area and shall contain a description of the
11 proposed disposal area and the location where the complete appli-
12 cation package may be reviewed and where copies may be obtained.

13 (c) Indicate in the public, departmental, and municipality
14 notice that the department shall hold a public hearing in the
15 area of the proposed disposal area if a written request is sub-
16 mitted by the applicant or a municipality within 30 days after
17 the date of publication of the notice, or by a petition submitted
18 to the department containing a number of signatures equal to not
19 less than 10% of the number of registered voters of the munici-
20 pality where the proposed disposal area is to be located who
21 voted in the last gubernatorial election. The petition shall be
22 validated by the clerk of the municipality. The public hearing
23 shall be held after the director makes a preliminary review of
24 the application and all pertinent data and before a construction
25 permit is issued or denied.

26 (d) Review the plans of the proposed disposal area to
27 determine if it complies with this part and the rules promulgated

1 under this part. The review shall be made by persons qualified
2 in hydrogeology and sanitary landfill engineering. A written
3 approval by the persons qualified in hydrogeology and sanitary
4 landfill engineering shall be received before a construction
5 permit is issued. If the site review, plan review, and the
6 application meet the requirements of this part and the rules
7 promulgated under this part, the director shall issue a construc-
8 tion permit that may contain a stipulation specifically applica-
9 ble to the site and operation. Except as otherwise provided in
10 section 6342, an expansion of the area of a disposal area, an
11 enlargement in capacity of a disposal area, or an alteration of a
12 disposal area to a different type of disposal area than had been
13 specified in the previous construction permit application consti-
14 tutes a new proposal for which a new construction permit is
15 required. The upgrading of a disposal area type required by the
16 director to comply with this part or the rules promulgated under
17 this part or to comply with a consent order does not require a
18 new construction permit.

19 (e) Notify the Michigan aeronautics commission if the dis-
20 posal area is a sanitary landfill proposed to be located within
21 10,000 feet of a runway or a proposed runway extension contained
22 in a plan approved by the Michigan aeronautics commission of an
23 airport licensed and regulated by the Michigan aeronautics
24 commission. The director shall make a copy of the application
25 available to the Michigan aeronautics commission. If, after a
26 period of time for review and comment not to exceed 60 days, the
27 Michigan aeronautics commission informs the director that it

1 finds that operation of the proposed disposal area would present
2 a potential hazard to air navigation and presents the basis for
3 its findings, the director may either recommend appropriate
4 changes in the location, construction, or operation of the pro-
5 posed disposal area or deny the application for a construction
6 permit. The director shall give an applicant an opportunity to
7 rebut a finding of the Michigan aeronautics commission that the
8 operation of a proposed disposal area would present a potential
9 hazard to air navigation.

10 Sec. 6311. (1) The director shall make a final decision as
11 to whether to issue a construction permit within 120 days after
12 the director receives an administratively complete application.
13 The decision of the director and the reasons for the decision
14 shall be in writing and shall be sent by first class mail to the
15 clerk of the municipality in which the disposal area is proposed
16 to be located and to the applicant within 10 days after the final
17 decision is made. If the director fails to make a final decision
18 within 120 days, the permit shall be considered issued.

19 (2) A construction permit shall expire 1 year after the date
20 of issuance, unless development under the construction permit is
21 initiated within that year. A construction permit that has
22 expired may be renewed upon payment of a permit renewal fee and
23 submission of any additional information the director may
24 require.

25 (3) Beginning March 30, 1988 and except as otherwise pro-
26 vided in this subsection, the director shall not issue a
27 construction permit for a disposal area within a planning area

1 unless a solid waste management plan for that planning area has
2 been approved pursuant to sections 6336 and 6337 and unless the
3 disposal area complies with and is consistent with the approved
4 solid waste management plan. The director may issue a construc-
5 tion permit for a disposal area designed to receive ashes
6 produced in connection with the combustion of fossil fuels for
7 electrical power generation in the absence of an approved county
8 solid waste management plan, upon receipt of a letter of approval
9 from whichever county or counties, group of municipalities, or
10 regional planning agency has prepared or is preparing the county
11 solid waste management plan for that planning area under section
12 6333 and from the municipality in which the disposal area is to
13 be located.

14 Sec. 6312. (1) A person shall dispose of solid waste at a
15 disposal area licensed under this part unless a person is permit-
16 ted by state law or rules promulgated by the department to dis-
17 pose of the solid waste at the site of generation.

18 (2) Except as otherwise provided in this section or in sec-
19 tion 6329, a person otherwise allowed under this part to own or
20 operate a solid waste disposal area shall not conduct, manage,
21 maintain, or operate a disposal area within this state without a
22 license from the director, contrary to an approved solid waste
23 management plan, or contrary to a permit, license, or final order
24 issued under this part. A person who intends to conduct, manage,
25 maintain, or operate a disposal area shall make a prior license
26 application to the director through a certified health department
27 on a form provided by the director. If the disposal area is

1 located in a county or city that does not have a certified health
2 department, the application shall be made directly to the
3 director.

4 (3) The application for a license shall contain the name and
5 residence of the applicant, the location of the proposed or
6 existing disposal area, and other information the director con-
7 sider necessary. The application shall be accompanied by a fee
8 of \$100.00.

9 (4) At the time of application for a license for a disposal
10 area, the applicant shall submit to a health officer or the
11 director a certification under the seal of a licensed profes-
12 sional engineer verifying that the construction of the disposal
13 area has proceeded according to the approved plans. The director
14 shall require additional certification during intermediate pro-
15 gression of the operation, or to verify proper closure of the
16 site.

17 (5) An applicant for an operating license, within 3 months
18 after a license denial, may resubmit the application, together
19 with additional information or corrections as are necessary to
20 address the reason for denial, without being required to pay an
21 additional application fee.

22 (6) In order to conduct tests and assess operational capa-
23 bilities, the owner or operator of a municipal solid waste incin-
24 erator that is designed to burn at a temperature in excess of
25 2500 degrees Fahrenheit may operate the incinerator without an
26 operating license, upon notice to the director, for a period not
27 to exceed 60 days.

1 Sec. 6313. A person shall not accept for disposal solid
2 waste or municipal solid waste incinerator ash that is not gener-
3 ated in the county in which the disposal area is located unless
4 the acceptance of solid waste or municipal solid waste incinera-
5 tor ash that is not generated in the county is explicitly autho-
6 rized in the approved county solid waste management plan. The
7 department shall take action to enforce this section within 30
8 days of obtaining knowledge of a violation of this section.

9 Sec. 6314. A person shall not knowingly dispose of, and an
10 owner or operator of a landfill shall not knowingly permit the
11 disposal of medical waste in a landfill unless that medical waste
12 has been decontaminated or is not required to be decontaminated
13 but is packaged in the manner required under part 138 of the
14 public health code, Act No. 368 of the Public Acts of 1978, being
15 sections 333.13801 to 333.13831 of the Michigan Compiled Laws.

16 Sec. 6315. (1) Upon receipt of a license application, the
17 director or health officer or an authorized representative of the
18 director or health officer shall inspect the site and determine
19 if the proposed operation complies with this part and the rules
20 promulgated under this part.

21 (2) The department shall not license a landfill facility
22 operating without an approved hydrogeologic monitoring program
23 until the department receives a hydrogeologic monitoring program
24 and the results of the program. The director shall use this
25 information in conjunction with other information required by
26 this part or the rules promulgated pursuant to this part to
27 determine a course of action regarding licensing of the facility

1 consistent with section 4005 of subtitle D of the solid waste
2 disposal act, title II of Public Law 89-272, 42 U.S.C. 6945, and
3 with this part and the rules promulgated pursuant to this part.
4 In deciding a course of action, the director shall consider, at a
5 minimum, the health hazards, environmental degradation, and other
6 public or private alternatives. The director may revoke a
7 license or issue a timetable or schedule to provide for compli-
8 ance for the facility or operation which specifies a schedule of
9 remedial measures, including a sequence of actions or operations,
10 that leads to compliance with this part within a reasonable time
11 period but not later than December 2, 1987.

12 Sec. 6316. (1) Subject to subsection (4), the director
13 shall make a final decision on a license application within
14 90 days after the director receives the application. The deci-
15 sion of the director and the reasons for the decision shall be in
16 writing and shall be sent by first class mail to the clerk of the
17 municipality in which the disposal area is located and to the
18 applicant within 10 days after the final decision is made. If
19 the director fails to make a final decision within 90 days, the
20 license is considered issued.

21 (2) An operating license shall expire 2 years after the date
22 of issuance. An operating license may be renewed before expira-
23 tion upon payment of a renewal application fee of \$100.00 if the
24 licensee is in compliance with this part and the rules promul-
25 gated under this part.

26 (3) The issuance of a license shall empower the director or
27 a health officer or an authorized representative of the director

1 or health officer to enter at any reasonable time, pursuant to
2 law, in or upon private or public property licensed under this
3 part for the purpose of inspecting or investigating conditions
4 relating to the storage, processing, or disposal of any
5 material.

6 (4) Beginning March 30, 1988 and except as otherwise pro-
7 vided in this subsection, the director shall not issue an operat-
8 ing license for a new disposal area within a planning area unless
9 a solid waste management plan for that planning area has been
10 approved pursuant to sections 6336 and 6337 and unless the dis-
11 posal area complies with and is consistent with the approved
12 solid waste management plan. The director may issue an operating
13 license for a disposal area designed to receive ashes produced in
14 connection with the combustion of fossil fuels for electrical
15 power generation in the absence of an approved county solid waste
16 management plan, upon receipt of a letter of approval from which-
17 ever county or counties, group of municipalities, or regional
18 planning agency has prepared or is preparing the county solid
19 waste management plan for that planning area under section 6333
20 and from the municipality in which the disposal area is to be
21 located.

22 Sec. 6317. (1) By March 12, 1990, or within 9 months after
23 the completion of construction of a municipal solid waste incin-
24 erator, whichever is later, the owner or operator of a municipal
25 solid waste incinerator shall submit a plan to the director for a
26 program that, to the extent practicable, reduces the incineration
27 of noncombustible materials and dangerous combustible materials

1 and their hazardous by-products at the incinerator. The director
2 shall approve or disapprove the plan submitted under this subsec-
3 tion within 30 days of receiving it. In reviewing the plan, the
4 director shall consider the current county solid waste management
5 plan, available markets for separated materials, disposal alter-
6 natives for the separated materials, and collection practices for
7 handling such separated materials. If the director disapproves a
8 plan, he or she shall notify the owner or operator submitting the
9 plan of this fact, and shall provide modifications that, if
10 included, would result in the plan's approval. If the director
11 disapproves a plan, the owner or operator of a municipal solid
12 waste incinerator shall within 30 days after receipt of the
13 director's disapproval submit a revised plan that addresses all
14 of the modifications provided by the director. The director
15 shall approve or disapprove the revised plan within 30 days of
16 receiving it, and approval of the revised plan shall not be
17 unreasonably withheld.

18 (2) Not later than 6 months after the approval of the plan
19 by the director under subsection (1), the owner or operator shall
20 implement the plan in accordance with the implementation schedule
21 set forth in the plan. The operation of a municipal solid waste
22 incinerator without an approved plan under this section shall
23 subject the owner or operator, or both, to all of the sanctions
24 provided by this part.

25 Sec. 6318. (1) At the time of licensing of a disposal area
26 which is a sanitary landfill, an instrument which imposes a
27 restrictive covenant upon the land involved shall be executed by

1 all of the owners of the tract of land upon which the landfill is
2 to be located and the director. If the land involved is state
3 owned, the state administrative board shall execute the covenant
4 on behalf of the state. The instrument imposing the restrictive
5 covenant shall be filed for record by the director or a health
6 officer in the office of the register of deeds of the county, or
7 counties, in which the facility is located. The covenant shall
8 state that the land described in the covenant has been or will be
9 used as a landfill and that neither the property owners, their
10 servants, agents, or employees, nor any of their heirs, succes-
11 sors, lessees, or assigns shall engage in filling, grading, exca-
12 vating, drilling, or mining on the property during the first 50
13 years following completion of the landfill without authorization
14 of the director. In giving authorization, the director shall
15 consider the original design, type of operation, material depos-
16 ited, and the stage of decomposition of the fill. Special exemp-
17 tion from this section may be granted by the director if the
18 lands involved are federal lands or if contracts existing between
19 the landowner and the licensee on January 11, 1979 are not
20 renegotiable.

21 (2) This part does not prohibit the commission from convey-
22 ing, leasing, or permitting the use of state land for a solid
23 waste disposal area or a resource recovery facility as provided
24 by applicable state law.

25 Sec. 6319. (1) The director shall specify, in writing, the
26 reasons for denial of a construction permit or an operating
27 license, specifying those particular sections of this part or

1 rules promulgated under this part that may be violated by
2 granting the application, and in what manner the violation may
3 occur.

4 (2) The health officer or director may issue a cease and
5 desist order specifying a schedule of closure or remedial action
6 in accordance with this part and rules promulgated pursuant to
7 this part or may establish a consent agreement specifying a
8 schedule of closure or remedial action in accordance with this
9 part and rules promulgated pursuant to this part to a person who
10 establishes, constructs, conducts, manages, maintains, or oper-
11 ates a disposal area without a permit or license, or to a person
12 who holds a permit or license but establishes, constructs, con-
13 ducts, manages, maintains, or operates a disposal area contrary
14 to an approved solid waste management plan or contrary to the
15 permit or license issued under this part.

16 (3) The director may issue a final order revoking, suspend-
17 ing, or restricting a permit or license after a contested case
18 hearing as provided in the administrative procedures act of 1969,
19 Act No. 306 of the Public Acts of 1969, being sections 24.201 to
20 24.328 of the Michigan Compiled Laws, if the director finds that
21 the disposal area is not being constructed or operated in accord-
22 ance with the approved plans, the conditions of a permit or
23 license, this part, or the rules promulgated under this part. A
24 final order issued pursuant to this section is subject to judi-
25 cial review as provided in Act No. 306 of the Public Acts of
26 1969. The director or a health officer shall inspect and file a
27 written report not less than 4 times per year for each licensed

1 disposal area. The director or the health officer shall provide
2 the municipality in which the licensed disposal area is located
3 with a copy of each written inspection report if the municipality
4 arranges with the director or the health officer to bear the
5 expense of duplicating and mailing the reports.

6 (4) The director, after consultation with the director of
7 public health or a designated representative of the director of
8 public health, may issue an order summarily suspending a permit
9 or license if the director determines that a violation of this
10 part or rules promulgated under this part has occurred which, in
11 the director's opinion, constitutes an emergency or poses an
12 imminent risk of injury to the public health or the environment.
13 A determination that a violation poses an imminent risk of injury
14 to the public health shall be made by the director of public
15 health. Summary suspension may be ordered effective on the date
16 specified in the order or upon service of a certified copy of the
17 order on the licensee, whichever is later, and shall remain
18 effective during the proceedings. The proceedings shall be com-
19 menced within 7 days of the issuance of the order and shall be
20 promptly determined.

21 Sec. 6320. (1) Fees collected by a health officer under
22 this part shall be deposited with the city or county treasurer,
23 who shall keep the deposits in a special fund designated for use
24 in carrying out the purposes of this part. If there is an ordi-
25 nance or charter provision that prohibits a health officer from
26 maintaining a special fund, the fees shall be deposited and used
27 in accordance with the ordinance or charter provision. Fees

1 collected by the director under this part shall be credited to
2 the general fund of the state.

3 (2) This part does not prohibit an individual from disposing
4 of solid waste from the individual's own household upon the
5 individual's own land as long as the disposal does not create a
6 nuisance or hazard to health. Solid waste accumulated as a part
7 of an improvement or the planting of privately owned farmland may
8 be disposed of on the property if the method used is not injuri-
9 ous to human life or property and does not unreasonably interfere
10 with the enjoyment of life or property.

11 Sec. 6321. (1) Beginning on March 28, 1993, if the owner or
12 operator of a landfill or a municipal solid waste incinerator
13 knows or should know that solid waste to be disposed of includes
14 yard clippings that are generated or collected, or both, on land
15 that is owned by a county, municipality, or a state facility, the
16 owner or operator of the landfill or municipal solid waste incin-
17 erator shall not accept the solid waste for disposal.

18 (2) Beginning on March 28, 1995, if the owner or operator of
19 a landfill or a municipal solid waste incinerator knows or should
20 know that solid waste to be disposed of includes yard clippings
21 from any source, the owner or operator of the landfill or munici-
22 pal solid waste incinerator shall not accept the solid waste for
23 disposal.

24 (3) This section does not apply to yard clippings that are
25 diseased or infested.

26 Sec. 6322. (1) Beginning on March 28, 1995, the open
27 burning of grass clippings or leaves, or both, is prohibited in

1 any municipality having a population of 7,500 or more, unless
2 specifically authorized by local ordinance which shall be
3 reported to the department of natural resources within 30 days of
4 enactment.

5 (2) This section shall not be construed to allow a county or
6 municipality to permit open burning of grass clippings or leaves,
7 or both, by ordinance that would otherwise be prohibited under
8 part 39, or rules promulgated under that part.

9 Sec. 6323. (1) The director shall not issue a license to
10 operate a disposal area unless the applicant has filed, as a part
11 of the application for a license, a bond to cover the cost of
12 closure and of postclosure monitoring and maintenance of the dis-
13 posal area after capacity has been reached or operations have
14 otherwise terminated, in accordance with the following:

15 (a) Except as provided in subdivision (b), a bond estab-
16 lished for a landfill shall be in an amount equal to \$20,000.00
17 per acre of licensed landfill. However, the amount of the bond
18 shall be not less than \$20,000.00, or more than \$1,000,000.00.
19 Each bond shall provide assurance for the maintenance of the fin-
20 ished landfill site for a period of 30 years after the landfill
21 or any approved portion is completed.

22 (b) A bond established for a landfill or portion of a land-
23 fill that receives municipal solid waste incinerator ash under
24 section 6342 shall be in an amount equal to \$50,000.00 per acre
25 of licensed landfill or portion of the landfill. Each bond shall
26 provide assurance for the maintenance of the finished landfill

1 site or portion of landfill site for a period of 30 years after
2 the landfill or any approved portion is completed.

3 (c) A bond established for a solid waste transfer facility,
4 incinerator, processing plant, or other solid waste handling or
5 disposal facility utilized in the disposal of solid waste shall
6 be in an amount equal to 1/4 of 1% of the construction cost of
7 the facility, but shall not be less than \$4,000.00, and shall be
8 continued in effect for a period of 2 years after the disposal
9 area is closed.

10 (d) An applicant for a license to operate a landfill may
11 post a cash bond with the department as provided for in subsec-
12 tion (2) instead of a surety bond or certificate of deposit. A
13 minimum of \$20,000.00 shall be paid to the director prior to
14 licensure. Subsequent payments to the director shall be made
15 every 6 months in an amount per acre of licensed landfill or any
16 approved portion of landfill as determined by the director, until
17 the required amount per acre is attained.

18 (2) An applicant who elects to use a certificate of deposit
19 as bond shall receive any accrued interest on that certificate of
20 deposit upon release of the bond by the director. An applicant
21 who elects to post cash as bond shall accrue interest on that
22 bond at the annual rate of 6%, to be accrued quarterly, except
23 that the interest rate payable to an applicant shall not exceed
24 the rate of interest accrued on the state common cash fund for
25 the quarter in which an accrual is determined. Interest shall be
26 paid to the applicant upon release of the bond by the director.
27 Any interest greater than 6% shall be deposited in the state

1 treasury to the credit of the general fund and shall be
2 appropriated to the department to be used by the director for
3 administration of this part.

4 (3) An applicant for a disposal area that is not a landfill
5 who has accomplished closure or postclosure monitoring and main-
6 tenance, approved by the director and in accordance with this
7 part and the rules promulgated under this part, may request a 50%
8 reduction in the bond.

9 (4) The director may utilize a bond required under this sec-
10 tion for the closure and postclosure monitoring and maintenance
11 of a disposal area if the applicant fails to comply with the clo-
12 sure and postclosure monitoring and maintenance requirements of
13 this part and the rules promulgated under this part.

14 (5) In addition to the bond required in subsection (1), a
15 landfill that receives municipal solid waste incinerator ash
16 under section 6342 shall provide a bond or a letter of credit in
17 an amount equal to \$2,000,000.00. The bond or letter of credit
18 described in this subsection shall provide assurance for remedial
19 action at the landfill for a period of time extending 30 years
20 after the landfill or any portion of the landfill is closed.

21 (6) The director shall not issue a construction permit or a
22 new license to operate a disposal area to an applicant who or
23 which is the subject of a bankruptcy action commenced under title
24 11 of the United States Code, 11 U.S.C. 101 to 1330, or any other
25 predecessor statute.

26 Sec. 6324. A person required under section 6323 to provide
27 financial assurance in the form of a bond or a letter of credit

1 for a landfill may request a reduction in the total amount of
2 financial assurance required upon reapplication for an operating
3 license pursuant to section 6316(2). The director shall grant
4 this request unless there are sufficient grounds for denial and
5 those reasons are provided in writing. The director shall grant
6 or deny a request for a reduction of the financial assurance
7 within 60 days after the request is made. If the director grants
8 a request for reduced financial assurance, the director shall
9 require financial assurance in an amount such that the amount of
10 money in the perpetual care fund plus the amount of the reduced
11 financial assurance equals the amount of the financial assurance
12 required in section 6323 plus an additional 20% of that amount.
13 The director shall release the financial assurance required by
14 section 6323 if the amount in the perpetual care fund exceeds the
15 amount of the financial assurance required under section 6323.
16 Prior to closure of a landfill, if money is disbursed from the
17 perpetual care fund, then the director may require a correspond-
18 ing increase in the amount of financial assurance required to be
19 provided.

20 Sec. 6325. (1) The owner or operator of a landfill shall
21 establish and maintain a perpetual care fund to be used exclu-
22 sively for closure, monitoring, and maintenance of the landfill,
23 and for response activity necessitated by a discharge from the
24 landfill of a substance which is or may become injurious to the
25 public health, safety, or welfare, or to the environment. A per-
26 petual care fund may be established as a trust or an escrow
27 account.

1 (2) Except as otherwise provided in this section, the owner
2 or operator of a landfill shall deposit into the perpetual care
3 fund 75 cents for each ton or portion of a ton of solid waste
4 that is disposed of in the landfill after June 17, 1990. If the
5 landfill is not equipped with a scale, the owner or operator
6 shall deposit into the perpetual care fund 25 cents for each
7 cubic yard or portion of a cubic yard of solid waste that is dis-
8 posed of in the landfill after June 17, 1990.

9 (3) The owner or operator of a landfill that is used for the
10 disposal of the following materials shall deposit into the per-
11 petual care fund 7.5 cents for each ton or cubic yard or portion
12 of a ton or cubic yard of these materials that are disposed of in
13 the landfill after June 17, 1990:

14 (a) Coal or wood ash that is disposed of in a landfill that
15 is used only for the disposal of coal or wood ash, or that is
16 permanently segregated in a landfill.

17 (b) Wastewater treatment sludge or sediments from wood pulp
18 or paper producing industries that is disposed of in a landfill
19 that is used only for the disposal of wastewater treatment sludge
20 and sediments from wood pulp or paper producing industries, or
21 that is permanently segregated in a landfill.

22 (c) Foundry sand that is approved by the director for use as
23 daily cover at an operating landfill, or that is disposed of in a
24 landfill that is used only for the disposal of foundry sand, or
25 that is permanently segregated in a landfill.

26 (d) Until June 17, 1993, organic fruit and vegetable
27 processing waste.

1 (4) The owner or operator of a landfill that is used only
2 for the disposal of a mixture of 2 or more of the materials
3 described in subsection (3)(a) to (c) or where a mixture of 2 or
4 more of these materials are permanently segregated in the land-
5 fill shall deposit into the perpetual care fund 19 cents for each
6 ton or cubic yard or portion of a ton or cubic yard of these
7 materials that are disposed of in the landfill after June 17,
8 1990.

9 (5) Money is not required to be deposited into a perpetual
10 care fund for materials that are regulated under Act No. 92 of
11 the Public Acts of 1970, being sections 425.181 to 425.188 of the
12 Michigan Compiled Laws.

13 (6) The owner or operator of a landfill may contribute addi-
14 tional amounts into the perpetual care fund at his or her
15 discretion.

16 (7) The custodian of a perpetual care fund shall be a bank
17 or other financial institution that has the authority to act as a
18 custodian and whose account operations are regulated and examined
19 by a federal or state agency. The custodian shall invest money
20 in a perpetual care fund in time or demand deposits of the custo-
21 dian or any other financial institution, to the extent insured by
22 an agency of the federal government, in direct obligations of the
23 federal government, or this state, or in obligations where the
24 principal and interest are guaranteed by the federal government
25 or this state or in a common trust fund or registered mutual fund
26 comprised solely of these investments. Earnings shall be
27 credited to the perpetual care fund. The agreement governing the

1 operation of the perpetual care fund shall be executed on a form
2 provided by the director. The custodian may be compensated for
3 reasonable fees and costs incurred for his or her responsibili-
4 ties as custodian. The accounts of a perpetual care fund shall
5 be kept on a calendar year basis. The custodian of a perpetual
6 care fund shall annually make an accounting to the director
7 within 30 days following the close of the calendar year.

8 (8) The custodian of a perpetual care fund shall not dis-
9 burse any funds to the owner or operator of a landfill for the
10 purposes of the perpetual care fund except upon the prior written
11 approval of the director. However, the custodian shall file all
12 required tax returns for which the perpetual care fund is liable
13 and shall disburse funds from earnings of the fund to pay law-
14 fully due taxes owed by the perpetual care fund without permis-
15 sion of the director. Upon the request of the owner or operator
16 of a landfill for a disbursement of funds from a perpetual care
17 fund, the director shall, within 60 days, grant written approval
18 or issue a written denial stating the reasons for denial. The
19 owner or operator of the landfill shall provide notice of
20 requests for disbursement, and denials and approvals to the cus-
21 todian of the perpetual care fund. Requests for disbursement
22 from a perpetual care fund shall be submitted not more frequently
23 than quarterly. If the amount of money in a perpetual care fund
24 falls below an amount equal to that required in section 6323,
25 the director is not required to approve a disbursement from the
26 fund, and the cost of necessary closure, monitoring, maintenance,

1 and response activities shall be borne by the owner and operator
2 of the landfill.

3 (9) If the owner or operator of a landfill refuses or fails
4 to conduct closure, monitoring, maintenance, or response activi-
5 ties as are necessary to protect the public health, safety, wel-
6 fare, or the environment or fails to request the disbursement of
7 money from a perpetual care fund when necessary to protect the
8 public health, safety, welfare, or the environment, then the
9 director may require the disbursement of money from the perpetual
10 care fund and may expend the money for closure, monitoring, main-
11 tenance, and response activities. The department may assess a
12 perpetual care fund for administrative costs associated with
13 actions taken under this subsection.

14 (10) Except as provided in subsection (12), upon the expira-
15 tion of 30 years after the closure of a landfill, any money in
16 the perpetual care fund for that landfill shall be disbursed by
17 the custodian upon approval of the director as follows:

18 (a) Fifty percent shall be deposited in the environmental
19 response fund created in part 45.

20 (b) Fifty percent shall be returned to the owner of the dis-
21 posal area unless a contract between the owner and the operator
22 of the disposal area provides otherwise.

23 (11) The owner of a landfill shall provide notice to the
24 custodian of the perpetual care fund for that landfill if there
25 is a change of ownership of the landfill. The custodian shall
26 maintain records of ownership of a landfill during the time in
27 which a perpetual care fund is established.

1 (12) Following the expiration of 30 years after the closure
2 of a landfill, the owner of the landfill may petition the direc-
3 tor for approval of disbursement of money in a perpetual care
4 fund. The director shall approve disbursement pursuant to
5 subsection (10) unless the director determines that the owner or
6 operator of the landfill has refused or failed to conduct clo-
7 sure, monitoring, maintenance, or response activities at the
8 landfill necessary to protect the public health, safety, welfare,
9 or the environment. If the director makes this determination,
10 the director shall deny the owner's request for approval of dis-
11 bursement and shall notify the owner of the landfill and the cus-
12 todian in writing of that determination and the reasons for that
13 determination. Ninety days after receiving notice of the
14 director's determination under this subsection, the custodian
15 shall disburse all of the money in the perpetual care fund to the
16 environmental response fund created in part 45 unless during this
17 90-day period the owner or operator of the landfill appeals the
18 director's determination in circuit court. If the owner of a
19 landfill does not petition for the director's approval of a dis-
20 bursement, the director on his or her own may approve disburse-
21 ment of money in a perpetual care fund pursuant to
22 subsection (10) or this subsection.

23 (13) This section does not relieve an owner or operator of a
24 disposal area that is a landfill of any liability that he or she
25 may have under this part or as otherwise provided by law.

26 (14) This section does not create a cause of action at law
27 or in equity against a custodian of a perpetual care fund other

1 than for errors or omissions related to investments, accountings,
2 disbursements, filings of required tax returns, and maintenance
3 of records required by this section or the applicable perpetual
4 care fund.

5 (15) As used in this section, "custodian" means the trustee
6 or escrow agent of a perpetual care fund.

7 Sec. 6326. The director, a health officer, or a law
8 enforcement officer of competent jurisdiction may inspect a solid
9 waste transporting unit that is being used to transport solid
10 waste along a public road to determine if the solid waste trans-
11 porting unit is designed, maintained, and operated in a manner to
12 prevent littering or to determine if the owner or operator of the
13 solid waste transporting unit is performing in compliance with
14 this part and the rules promulgated pursuant to this part.

15 Sec. 6327. (1) A solid waste hauler transporting solid
16 waste over a public road in this state shall deliver all waste to
17 a disposal area or solid waste transfer facility licensed under
18 this part and shall use only a vehicle or container that does not
19 contribute to littering and that conforms to the rules promul-
20 gated by the director.

21 (2) A solid waste hauler who violates this part or a rule
22 promulgated pursuant to this part, or is responsible for a vehi-
23 cle that has in part contributed to a violation of this part or a
24 rule promulgated pursuant to this part is subject to a penalty as
25 provided in section 6349.

26 Sec. 6328. (1) A solid waste transporting unit used for
27 garbage, industrial or domestic sludges, or other moisture laden

1 materials not specifically covered by part 71, shall be
2 watertight and constructed, maintained, and operated to prevent
3 littering. Solid waste transporting units used for hauling other
4 solid waste shall be designed and operated to prevent littering
5 or any other nuisance.

6 (2) A solid waste hauler who violates this part or the rules
7 promulgated under this part is subject to the penalties provided
8 in this part.

9 (3) The director, a health officer, or a law enforcement
10 officer may order a solid waste transporting unit out of service
11 if the unit does not satisfy the requirements of this part or the
12 rules promulgated under this part. Continued use of a solid
13 waste transporting unit ordered out of service is a violation of
14 this part.

15 Sec. 6329. (1) A disposal area that is a solid waste trans-
16 fer facility is not subject to the construction permit and oper-
17 ating license requirements of this part if either of the follow-
18 ing circumstances exists:

19 (a) The solid waste transfer facility is not designed to
20 accept wastes from vehicles with mechanical compaction devices.

21 (b) The solid waste transfer facility accepts less than 200
22 uncompacted cubic yards per day.

23 (2) The solid waste transfer facilities exempted from the
24 construction permit and operating license requirements of this
25 part by subsection (1) shall comply with the operating require-
26 ments of this part and the rules promulgated under this part.

1 (3) Except as provided in subsection (5), a disposal area
2 that is an incinerator may, but is not required to, comply with
3 the construction permit and operating license requirements of
4 this part if both of the following conditions are met:

5 (a) The operation of the incinerator does not result in the
6 exposure of any solid waste to the atmosphere and the elements.

7 (b) The incinerator has a permit issued under part 39.

8 (4) A disposal area that is an incinerator that does not
9 comply with the construction permit and operating license
10 requirements of this part as permitted in subsection (3) is
11 subject to the planning provisions of this part and must be
12 included in the county solid waste management plan for the county
13 in which the incinerator is located.

14 (5) A disposal area that is a municipal solid waste inciner-
15 ator that is designed to burn at a temperature in excess of 2500
16 degrees Fahrenheit is not subject to the construction permit
17 requirements of this part.

18 Sec. 6330. (1) A municipality or county may establish and
19 operate a collection center for junk motor vehicles and farm
20 implements.

21 (2) A municipality or county may collect junk motor vehicles
22 and farm implements and dispose of them through its collection
23 center, through the process of competitive bidding.

24 (3) A municipality or county may issue bonds as necessary
25 pursuant to Act No. 342 of the Public Acts of 1969, as amended,
26 being sections 141.151 to 141.153 of the Michigan Compiled Laws,
27 to finance the cost of constructing or operating facilities to

1 collect junk motor vehicles or farm implements. The bonds shall
2 be general obligation bonds and shall be backed by the full faith
3 and credit of the municipality or county.

4 (4) As used in this section, "collect" means to obtain a
5 vehicle pursuant to section 252 of the Michigan vehicle code, Act
6 No. 300 of the Public Acts of 1949, being section 257.252 of the
7 Michigan Compiled Laws, or to obtain the vehicle or farm imple-
8 ment and its title pursuant to a transfer from the owner.

9 Sec. 6331. (1) A municipality or county shall assure that
10 all solid waste is removed from the site of generation frequently
11 enough to protect the public health, and is delivered to licensed
12 disposal areas, except waste which is permitted by state law or
13 rules promulgated by the department, to be disposed of at the
14 site of generation.

15 (2) An ordinance enacted before February 8, 1988 by a county
16 or municipality incidental to the financing of a publicly owned
17 disposal area or areas under construction that directs that all
18 or part of the solid waste generated in that county or municipal-
19 ity be directed to the disposal area or areas is an acceptable
20 means of compliance with subsection (1), notwithstanding that the
21 ordinance, in the case of a county, has not been approved by the
22 governor. This subsection applies only to ordinances adopted by
23 the governing body of a county or municipality before February 8,
24 1988, and does not validate or invalidate an ordinance adopted
25 after February 8, 1988 as an acceptable means of compliance with
26 subsection (1).

1 Sec. 6332. (1) Except as provided in subsection (3), a
2 municipality may impose an impact fee of not more than 10 cents
3 per cubic yard on solid waste that is disposed of in a landfill
4 located within the municipality that is utilized by the public
5 and utilized to dispose of solid waste collected from 2 or more
6 persons. However, if the landfill is located within a village,
7 the impact fee provided for in this subsection shall be imposed
8 by the township in agreement with the village. The impact fee
9 shall be assessed uniformly on all wastes accepted for disposal.

10 (2) Except as provided in subsection (3), a municipality may
11 impose an impact fee of not more than 10 cents per cubic yard on
12 municipal solid waste incinerator ash that is disposed of in a
13 landfill located within the municipality that is utilized to dis-
14 pose of municipal solid waste incinerator ash. However, if the
15 landfill is located within a village, the impact fee provided for
16 in this subsection shall be imposed by the township in agreement
17 with the village.

18 (3) A municipality may enter into an agreement with the
19 owner or operator of a landfill to establish a higher impact fee
20 than that provided for in subsections (1) and (2).

21 (4) The impact fees imposed under this section shall be col-
22 lected by the owner or operator of a landfill and shall be paid
23 to the municipality quarterly by the thirtieth day after the end
24 of each calendar quarter. However, the impact fees allowed to be
25 assessed to each landfill under this section shall be reduced by
26 any amount of revenue paid to or available to the municipality
27 from the landfill under the terms of any preexisting agreements,

1 including, but not limited to, contracts, special use permit
2 conditions, court settlement agreement conditions, and trusts.

3 (5) Unless a trust fund is established by a municipality
4 pursuant to subsection (6), the revenue collected by a municipal-
5 ity under subsections (1) and (2) shall be deposited in its gen-
6 eral fund to be used for any purpose that promotes the public
7 health, safety, or welfare of the citizens of the municipality.
8 However, revenue collected pursuant to this section shall not be
9 used to bring or support a lawsuit or other legal action against
10 the owner or operator of the landfill who is collecting an impact
11 fee pursuant to subsection (4) unless the owner or operator of
12 the landfill has instituted a lawsuit or other legal action
13 against the municipality.

14 (6) The municipality may establish a trust fund to receive
15 revenue collected pursuant to this section. The trust fund shall
16 be administered by a board of trustees. The board of trustees
17 shall consist of the following members:

18 (a) The chief elected official of the municipality creating
19 the trust fund.

20 (b) An individual from the municipality appointed by the
21 governing board of the municipality.

22 (c) An individual approved by the owners or operators of the
23 landfills within the municipality and appointed by the governing
24 board of the municipality.

25 (7) Individuals appointed to serve on the board of trustees
26 under subsection (6)(b) and (c) shall serve for terms of
27 2 years.

1 (8) Money in the trust fund may be expended, pursuant to a
2 majority vote of the board of trustees, for any purpose that pro-
3 motes the public health, safety, or welfare of the citizens of
4 the municipality. However, revenue collected pursuant to this
5 section shall not be used to bring or support a lawsuit or other
6 legal action against the owner or operator of a landfill who is
7 collecting an impact fee pursuant to subsection (4) unless the
8 owner or operator of the landfill has instituted a lawsuit or
9 other legal action against the municipality.

10 Sec. 6333. (1) Each solid waste management plan shall
11 include an enforceable program and process to assure that the
12 nonhazardous solid waste generated or to be generated in the
13 planning area for a 20-year period is collected and recovered,
14 processed, or disposed of at disposal areas that comply with
15 state law and rules promulgated by the department governing loca-
16 tion, design, and operation of the disposal areas.

17 (2) An initial solid waste management plan shall be prepared
18 and approved under this section and shall be submitted to the
19 director not later than January 5, 1984. The initial plan shall
20 be prepared for a 20-year period and shall be reviewed and
21 updated every 5 years. An updated plan and an amendment to a
22 plan shall be prepared and approved as provided in this section
23 and sections 6334, 6335, 6336, and 6337. The solid waste manage-
24 ment plan shall encompass all municipalities within the county.
25 The plan shall at a minimum comply with the requirements of
26 section 6338. The solid waste management plan shall take into
27 consideration solid waste management plans in contiguous counties

1 and existing local approved solid waste management plans as they
2 relate to the county's needs. At a minimum, a county preparing a
3 solid waste management plan shall consult with the regional plan-
4 ning agency from the beginning to the completion of the plan.

5 (3) Not later than July 1, 1981, each county shall file with
6 the director and with each municipality within the county on a
7 form provided by the director, a notice of intent, indicating the
8 county's intent to prepare a county solid waste management plan
9 or to upgrade an existing plan. The notice shall identify the
10 designated agency which shall be responsible for preparing the
11 county plan.

12 (4) If the county fails to file a notice of intent with the
13 director within the prescribed time, the director immediately
14 shall notify each municipality within the county and shall
15 request those municipalities to prepare the county solid waste
16 management plan and shall convene a meeting to discuss the plan
17 preparation. Within 4 months following notification by the
18 director, the municipalities shall decide by a majority vote of
19 the municipalities in the county whether or not to file a notice
20 of intent to prepare the county solid waste management plan.
21 Each municipality in the county shall have 1 vote. If a majority
22 does not agree, then a notice of intent shall not be filed. The
23 notice shall identify the designated agency which shall be
24 responsible for preparing the county plan.

25 (5) If the municipalities fail to file a notice of intent to
26 prepare a county solid waste management plan with the director
27 within the prescribed time, the director shall request the

1 appropriate regional solid waste management planning agency to
2 prepare the county solid waste management plan. The regional
3 solid waste management planning agency shall respond within
4 90 days after the date of the request.

5 (6) If the regional solid waste management planning agency
6 declines to prepare a county plan, the director shall prepare the
7 plan for the county and that plan shall be final.

8 (7) A solid waste management planning agency, upon request
9 of the director, shall submit a progress report in preparing its
10 solid waste management plan.

11 Sec. 6334. (1) The county executive of a charter county
12 that elects a county executive and that chooses to prepare a
13 solid waste management plan under section 6333 or the county
14 board of commissioners in all other counties choosing to prepare
15 an initial 20-year solid waste management plan under section
16 6333, or the municipalities preparing an initial 20-year plan
17 under section 6333(4), shall appoint a planning committee to
18 assist the agency designated to prepare the plan under section
19 6333. If the county charter provides procedures for approval by
20 the county board of commissioners of appointments by the county
21 executive, an appointment under this subsection is subject to
22 that approval. A planning committee appointed pursuant to this
23 subsection shall be appointed for terms of 2 years. A planning
24 committee appointed pursuant to this subsection may be reap-
25 pointed for the purpose of completing the preparation of the ini-
26 tial plan or overseeing the implementation of the initial plan.
27 Reappointed members of a planning committee shall serve for terms

1 not to exceed 2 years as determined by the appointing authority.
2 An initial 20-year solid waste management plan shall only be
3 approved by a majority of the members appointed and serving.

4 (2) A planning committee appointed pursuant to this section
5 shall consist of 14 members. Of the members appointed, 4 shall
6 represent the solid waste management industry, 2 shall represent
7 environmental interest groups, 1 shall represent county govern-
8 ment, 1 shall represent city government, 1 shall represent town-
9 ship government, 1 shall represent the regional solid waste plan-
10 ning agency, 1 shall represent industrial waste generators, and 3
11 shall represent the general public. A member appointed to repre-
12 sent a county, city, or township government shall be an elected
13 official of that government or the designee of that elected
14 official. Vacancies shall be filled in the same manner as the
15 original appointments. A member may be removed for nonperform-
16 ance of duty.

17 (3) A planning committee appointed pursuant to this section
18 shall annually elect a chairperson and shall establish procedures
19 for conducting the committee's activities and for reviewing the
20 matters to be considered by the committee.

21 Sec. 6335. A county or regional solid waste management
22 planning agency preparing a solid waste management plan shall do
23 all of the following:

24 (a) Solicit the advice and consult periodically during the
25 preparation of the plan with the municipalities, appropriate
26 organizations, and the private sector in the county under section
27 6338(1) and solicit the advice and consult with the appropriate

1 county or regional solid waste management planning agency, and
2 adjacent counties and municipalities in adjacent counties which
3 may be significantly affected by the solid waste management plan
4 for a county.

5 (b) If a planning committee has been appointed under section
6 6334, prepare the plan with the advice, consultation, and assist-
7 ance of the planning committee.

8 (c) Notify, by letter, the chief elected official of each
9 municipality and any other person so requesting within the
10 county, not less than 10 days before each public meeting of the
11 planning agency designated by the county, if that planning agency
12 plans to discuss the county plan. The letter shall indicate as
13 precisely as possible the subject matter being discussed.

14 (d) Submit for review a copy of the proposed county or
15 regional solid waste management plan to the director, to each
16 municipality within the affected county, and to adjacent counties
17 and municipalities that may be affected by the plan or that have
18 requested the opportunity to review the plan. The county plan
19 shall be submitted for review to the designated regional solid
20 waste management planning agency for that county. Reviewing
21 agencies shall be allowed an opportunity of not less than 3
22 months to review and comment on the plan before adoption of the
23 plan by the county or a designated regional solid waste manage-
24 ment planning agency. The comments of a reviewing agency shall
25 be submitted with the plan to the county board of commissioners
26 or to the regional solid waste management planning agency.

1 (e) Publish a notice, at the time the plan is submitted for
2 review under subdivision (d), of the availability of the plan for
3 inspection or copying, at cost, by an interested person.

4 (f) Conduct a public hearing on the proposed county solid
5 waste management plan before formal adoption. A notice shall be
6 published not less than 30 days before a hearing, in a paper
7 having a major circulation within the county. The notice shall
8 indicate a location where copies of the plan are available for
9 public inspection and the time and place of the public hearing.

10 Sec. 6336. (1) A municipality located in 2 counties or
11 adjacent to a municipality located in another county may request
12 to be included in the adjacent county's plan. The request shall
13 be approved by a resolution of each county board of commissioners
14 of the counties involved before the municipality may be
15 included. A municipality may appeal a decision not to be
16 included in an adjacent county's plan to the director. If there
17 is an appeal, the director shall issue a decision within
18 45 days. The decision of the director is final.

19 (2) Except as provided in subsection (3), the county board
20 of commissioners shall formally act on the plan following the
21 public hearing required by section 6335(f).

22 (3) If a planning committee has been appointed by the county
23 board of commissioners under section 6334(1), the county board of
24 commissioners, or if a plan is prepared under section 6333(4),
25 the municipalities in the county who voted in favor of filing a
26 notice of intent to prepare a county solid waste management plan,
27 shall take formal action on the plan after the completion of

1 public hearings and only after the plan has been approved by a
2 majority of the planning committee as provided in section
3 6334(1). If the county board of commissioners, or if a plan is
4 prepared under section 6333(4), a majority of the municipalities
5 in the county who voted in favor of filing a notice of intent to
6 prepare a county solid waste management plan, does not approve
7 the plan as submitted, the plan shall be returned to the planning
8 committee along with a statement of objections, to the plan.
9 Within 30 days after receipt, the planning committee shall review
10 the objections and shall return the plan with its
11 recommendations.

12 (4) Following approval the county plan shall be approved by
13 the governing bodies of not less than 67% of the municipalities
14 within each respective county before the plan may take effect.

15 (5) A county plan prepared by a regional solid waste manage-
16 ment planning agency shall be approved by the governing bodies of
17 not less than 67% of the municipalities within each respective
18 county before the plan may take effect.

19 (6) If, after the plan has been adopted, the governing
20 bodies of not less than 67% of the municipalities have not
21 approved the plan, the director shall prepare a plan for the
22 county, including those municipalities that did not approve the
23 county plan. A plan prepared by the director shall be final.

24 Sec. 6337. (1) The director shall, within 6 months after a
25 plan has been submitted for approval, approve or disapprove the
26 plan. An approved plan shall at a minimum meet the requirements
27 set forth in section 6338(1).

1 (2) The director shall review an approved plan periodically
2 and determine if revisions or corrections are necessary to bring
3 the plan into compliance with this part. The director may, after
4 notice and opportunity for a public hearing, held pursuant to the
5 administrative procedures act of 1969, Act No. 306 of the Public
6 Acts of 1969, being sections 24.201 to 24.328 of the Michigan
7 Compiled Laws, withdraw approval of the plan. If the director
8 withdraws approval of a county plan, the director shall establish
9 a timetable or schedule for compliance with this part.

10 Sec. 6338. (1) Not later than September 11, 1979, the
11 director shall promulgate rules for the development, form, and
12 submission of initial solid waste management plans. The rules
13 shall require all of the following:

14 (a) The establishment of goals and objectives for prevention
15 of adverse effects on the public health and on the environment
16 resulting from improper solid waste collection, processing, or
17 disposal including protection of surface and groundwater quality,
18 air quality, and the land.

19 (b) An evaluation of waste problems by type and volume,
20 including residential and commercial solid waste, hazardous
21 waste, industrial sludges, pretreatment residues, municipal
22 sewage sludge, air pollution control residue, and other wastes
23 from industrial or municipal sources.

24 (c) An evaluation and selection of technically and economi-
25 cally feasible solid waste management options, which may include
26 sanitary landfill, resource recovery systems, resource
27 conservation, or a combination of options.

1 (d) An inventory and description of all existing facilities
2 where solid waste is being treated, processed, or disposed of,
3 including a summary of the deficiencies, if any, of the facili-
4 ties in meeting current solid waste management needs.

5 (e) The encouragement and documentation as part of the plan,
6 of all opportunities for participation and involvement of the
7 public, all affected agencies and parties, and the private
8 sector.

9 (f) That the plan contain enforceable mechanisms for imple-
10 menting the plan, including identification of the municipalities
11 within the county responsible for the enforcement. This subdivi-
12 sion does not preclude the private sector's participation in pro-
13 viding solid waste management services consistent with the county
14 plan.

15 (g) Current and projected population densities of each
16 county and identification of population centers and centers of
17 solid waste generation, including industrial wastes.

18 (h) That the plan area has, and will have during the plan
19 period, access to a sufficient amount of available and suitable
20 land, accessible to transportation media, to accommodate the
21 development and operation of solid waste disposal areas, or
22 resource recovery facilities provided for in the plan.

23 (i) That the solid waste disposal areas or resource recovery
24 facilities provided for in the plan are capable of being devel-
25 oped and operated in compliance with state law and rules of the
26 department pertaining to protection of the public health and the
27 environment, considering the available land in the plan area, and

1 the technical feasibility of, and economic costs associated with,
2 the facilities.

3 (j) A timetable or schedule for implementing the county
4 solid waste management plan.

5 (2) In order for a disposal area to serve the disposal needs
6 of another county, state, or country, the service, including the
7 disposal of municipal solid waste incinerator ash, must be
8 explicitly authorized in the approved solid waste management plan
9 of the receiving county. With regard to intercounty service
10 within this state, the service must also be explicitly authorized
11 in the exporting county's solid waste management plan.

12 (3) A person shall not dispose of, store, or transport solid
13 waste in this state unless the person complies with the require-
14 ments of this part.

15 (4) Following approval by the director of a county solid
16 waste management plan and after July 1, 1981, an ordinance, law,
17 rule, regulation, policy, or practice of a municipality, county,
18 or governmental authority created by statute, which prohibits or
19 regulates the location or development of a solid waste disposal
20 area, and which is not part of or not consistent with the
21 approved solid waste management plan for the county, is in con-
22 flict with this part and is not enforceable.

23 Sec. 6339. (1) The director shall not approve a plan update
24 unless:

25 (a) The plan contains an analysis or evaluation of the best
26 available information applicable to the plan area in regard to
27 recyclable materials and all of the following:

1 (i) The kind and volume of material in the plan area's waste
2 stream that may be recycled or composted.

3 (ii) How various factors do or may affect a recycling and
4 composting program in the plan area. Factors shall include an
5 evaluation of the existing solid waste collection system; materi-
6 als market; transportation networks; local composting and recycl-
7 ing support groups, or both; institutional arrangements; the pop-
8 ulation in the plan area; and other pertinent factors.

9 (iii) An identification of impediments to implementing a
10 recycling and composting program and recommended strategies for
11 removing or minimizing impediments.

12 (iv) How recycling and composting and other processing or
13 disposal methods could complement each other and an examination
14 of the feasibility of excluding site separated material and
15 source separated material from other processing or disposal
16 methods.

17 (v) Identification and quantification of environmental, eco-
18 nomic, and other benefits that could result from the implementa-
19 tion of a recycling and composting program.

20 (vi) The feasibility of source separation of materials that
21 contain potentially hazardous components at disposal areas. This
22 subparagraph applies only to plan updates that are due after
23 January 31, 1989.

24 (b) The plan either provides for recycling and composting
25 recyclable materials from the plan area's waste stream or estab-
26 lishes that recycling and composting is not necessary or feasible
27 or is only necessary or feasible to a limited extent.

1 (c) A plan that proposes a recycling or composting program,
2 or both, details the major features of that program, including
3 all of the following:

4 (i) The kinds and volumes of recyclable materials that will
5 be recycled or composted.

6 (ii) Collection methods.

7 (iii) Measures that will ensure collection such as ordi-
8 nances or cooperative arrangements, or both.

9 (iv) Ordinances or regulations affecting the program.

10 (v) The role of counties and municipalities in implementing
11 the plan.

12 (vi) The involvement of existing recycling interests, solid
13 waste haulers, and the community.

14 (vii) Anticipated costs.

15 (viii) On-going program financing.

16 (ix) Equipment selection.

17 (x) Public and private sector involvement.

18 (xi) Site availability and selection.

19 (xii) Operating parameters such as PH and heat range.

20 (2) The director may promulgate rules as may be necessary to
21 implement this section.

22 Sec. 6340. Not later than September 11, 1979, the director
23 shall submit to the legislature rules that contain sanitary
24 design and operational standards for solid waste transporting
25 units and disposal areas and otherwise implement this part. The
26 rules shall include standards for hydrogeologic investigations;
27 monitoring; liner materials; leachate collection and treatment,

1 if applicable; groundwater separation distances; environmental
2 assessments; methane gas control; soil erosion; sedimentation
3 control; groundwater and surface water quality; noise and air
4 pollution; and the use of floodplains and wetlands.

5 Sec. 6341. (1) The state solid waste management plan shall
6 consist of the state solid waste plan developed under the
7 resource recovery act, Act No. 366 of the Public Acts of 1974,
8 being sections 299.301 to 299.321 of the Michigan Compiled Laws,
9 and all county plans approved or prepared by the director.

10 (2) The director shall consult and assist in the preparation
11 and implementation of the county solid waste management plans.

12 (3) The director may undertake or contract for studies or
13 reports necessary or useful in the preparation of the state solid
14 waste management plan.

15 (4) The director shall develop a strategy to encourage
16 resource recovery and establishment of waste-to-energy
17 facilities. By March 30, 1989, the director shall submit to the
18 legislature a report on the details of the strategy. The report
19 shall recommend public and private sector incentives and suggest
20 potential regulatory relief to remove constraints on the siting
21 of waste-to-energy and resource recovery facilities. The strat-
22 egy and report shall be prepared with the goal of reducing land
23 disposal to unusable residuals by the year 2005. The report
24 shall include specific recommendations for necessary legislation
25 to implement the strategy.

26 Sec. 6342. (1) Following June 12 1989, the generation,
27 transportation, treatment, storage, and disposal of municipal

1 solid waste incinerator ash shall be regulated under this part as
2 solid waste and shall not be regulated under part 61.

3 (2) Except as provided in subsection (10), municipal solid
4 waste incinerator ash shall be disposed of in 1 of the
5 following:

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

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

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

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

14 (A) A leachate collection system.

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

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

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

19 (E) A compacted clay liner at least 3 feet thick with a max-
20 imum hydraulic conductivity of 1×10^{-7} centimeters per second
21 or a synthetic liner at least 40 mils thick.

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

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

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

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

3 (A) A leachate collection system.

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

5 (C) A geotextile layer at least 100 mils thick.

6 (D) A synthetic liner at least 40 mils thick.

7 (E) A geotextile layer at least 100 mils thick.

8 (F) A leak detection and leachate collection system.

9 (G) A synthetic liner at least 40 mils thick.

10 (iv) The landfill's cells each hold a maximum of 100,000
11 cubic yards of municipal solid waste incinerator ash.

12 (v) If contaminants that may threaten the public health,
13 safety, welfare, or the environment are found in the leachate
14 collection system described in subparagraph (iii)(F), the owner
15 or operator of the landfill shall determine the source and nature
16 of the contaminants and make repairs, to the extent practicable,
17 that will prevent the contaminants from entering the leachate
18 collection system. If the director determines that the source of
19 the contaminants is caused by a design failure of the landfill,
20 the director, notwithstanding an approved construction permit or
21 operating license, may require landfill cells at that landfill
22 that will be used for the disposal of municipal solid waste
23 incinerator ash, which are under construction or will be con-
24 structed in the future at the landfill, to be constructed in con-
25 formance with improved design standards approved by the
26 director. However, this subdivision does not require the removal

1 of liners or leak detection and leachate collection systems that
2 are already in place in a landfill cell under construction.

3 (vi) On June 12, 1989, the owner or operator of the landfill
4 has a letter of agreement with an existing municipal solid waste
5 incinerator to receive municipal solid waste incinerator ash, and
6 the owner or operator has by September 10, 1989 submitted this
7 letter to the director.

8 (c) A landfill that meets all of the following
9 requirements:

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

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

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

16 (A) A leachate collection system.

17 (B) A synthetic liner at least 80 mils thick.

18 (C) At the option of the owner or operator of the landfill,
19 a leak detection and leachate collection system.

20 (D) At least 10 feet of either natural or compacted clay
21 with a maximum hydraulic conductivity of 1×10^{-7} centimeters
22 per second.

23 (iv) If construction of the landfill begins prior to June 1,
24 1990, the liner specified in subdivision (c)(iii)(B) may be 60
25 mils thick.

26 (d) A landfill with a design approved by the director that
27 will prevent the migration of any hazardous constituent into the

1 groundwater or surface water at least as effectively as the
2 design requirements of subdivisions (a) to (c).

3 (e) A type II landfill, as defined in R 299.4105, if all of
4 the following occur:

5 (i) The ash was generated by a municipal solid waste incin-
6 erator that is designed to burn at a temperature in excess of
7 2500 degrees Fahrenheit.

8 (ii) The ash is tested by a laboratory listed on the list
9 compiled by the department under section 6344 and the ash, upon
10 testing, meets the requirements of 40 C.F.R. 261.20 to 261.24. A
11 person seeking to dispose of ash under this subdivision may
12 select an approved laboratory from the list compiled in section
13 6344 to conduct the test.

14 (iii) The ash from any individual municipal solid waste
15 incinerator is disposed of pursuant to this subdivision for a
16 period not to exceed 60 days..

17 (3) Except as provided in subsection (5), a landfill that is
18 constructed pursuant to the design described in subsection (2)(a)
19 or (b) shall be capped following its closure by all of the fol-
20 lowing in descending order:

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

22 (b) Two feet of subsurface drainage media or cobbles or a
23 combination thereof to protect against animal burrowing, tempera-
24 ture, erosion, and rooted vegetation.

25 (c) A flexible membrane liner at least 30 mils thick.

26 (d) 3 feet of compacted clay with a maximum hydraulic
27 conductivity of 1×10^{-7} centimeters per second.

1 (e) A synthetic liner at least 30 mils thick with a
2 geomembrane infiltration system above the liner may be used in
3 place of the compacted clay specified in subsection (3)(d) if on
4 June 12, 1989 the owner or operator of the landfill has a letter
5 of agreement with an existing municipal solid waste incinerator
6 to receive municipal solid waste incinerator ash, and the owner
7 or operator has by September 10, 1989 submitted this letter to
8 the director.

9 (4) Except as provided in subsection (5), a landfill that is
10 constructed pursuant to the design described in subsection (2)(c)
11 shall be capped following its closure by all of the following in
12 descending order:

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

14 (b) Two feet of compacted clay with a maximum hydraulic con-
15 ductivity of 1×10^{-7} centimeters per second of compacted clay.

16 (c) An infiltration collection system.

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

18 (e) One foot of compacted clay with a maximum hydraulic con-
19 ductivity of 1×10^{-7} centimeters per second.

20 (5) A landfill that receives municipal solid waste incinera-
21 tor ash under this section may be capped with a design approved
22 by the director that will prevent the migration of any hazardous
23 constituent into the groundwater or surface water at least as
24 effectively as the design requirements of subsections (3) and
25 (4).

1 (6) If leachate is collected from a landfill under this
2 section, the leachate shall be monitored and tested in accordance
3 with this part and the rules promulgated under this part.

4 (7) Prior to and after June 12, 1989, notwithstanding any
5 other provision in this section, municipal solid waste incinera-
6 tor ash may be stored or may continue to be stored on a temporary
7 basis if all of the following occur:

8 (a) The ash is stored in a landfill licensed under this
9 part.

10 (b) The owner or operator of the landfill, by September 12,
11 1989, does either of the following:

12 (i) Applies for an operating permit amendment pursuant to
13 subsection (11) that would allow the permanent disposal of the
14 ash at the landfill.

15 (ii) Applies for a construction permit under this part that
16 would allow the permanent disposal of the ash at the landfill.

17 (c) The ash is stored for not longer than 9 months after an
18 operating license or an operating license amendment is approved
19 or denied by the director, or by June 12, 1991, whichever occurs
20 first, unless the director has unreasonably delayed approving or
21 denying an operating license or operating license amendment.

22 (d) On June 12, 1989, the owner or operator of the landfill
23 has a letter of agreement with an existing municipal solid waste
24 incinerator or with a municipal solid waste incinerator under
25 construction to receive municipal solid waste incinerator ash,
26 and the owner or operator has by September 10, 1989 submitted
27 this letter to the director.

1 (e) The temporary storage at the landfill provides for an
2 intermediate separation of the ash from other solid waste using
3 not less than 2 feet of compacted soil or a synthetic liner at
4 least 30 mils thick and the ash is covered daily in a manner that
5 prevents the ash from blowing.

6 (f) By September 10, 1989 or prior to beginning temporary
7 storage, the owner or operator of the landfill receiving the
8 municipal solid waste incinerator ash submits an ash management
9 plan to the director that includes leachate and runoff control
10 measures and dust control measures. The director shall approve
11 or disapprove the plan submitted under this subsection within 30
12 days of receiving it. If the director disapproves the plan, he
13 or she shall notify the owner or operator submitting the plan of
14 this fact, and shall provide modifications that, if included,
15 would result in the plan's approval. If the director disapproves
16 a plan, the owner or operator of the landfill shall within 30
17 days after receipt of the director's disapproval submit a revised
18 plan that addresses all of the modifications provided by the
19 director. The director shall approve or disapprove the revised
20 plan within 30 days of receiving it, and the director shall not
21 unreasonably withhold approval of the revised plan. Upon
22 approval by the director, the plan shall become part of the oper-
23 ating license of the landfill. The operation of a landfill with-
24 out an approved plan under this subdivision shall subject the
25 owner or operator, or both, to all of the sanctions provided by
26 this part.

1 (g) By July 12, 1989 or prior to receiving the ash for
2 temporary storage, the owner or operator of the landfill notifies
3 the governing body of the municipality and the county board of
4 commissioners of the county in which the landfill is located of
5 its intent to temporarily store the ash.

6 (8) Following a period of temporary storage under subsection
7 (7), municipal solid waste incinerator ash shall be permanently
8 disposed of in accordance with this section. In addition to any
9 other penalty provided in this part, a person who stores munici-
10 pal solid waste incinerator ash under subsection (7) for a period
11 longer than is allowed by subsection (7) is liable for a civil
12 fine of \$5,000.00 per day of violation.

13 (9) The owner or operator of a landfill that receives munic-
14 ipal solid waste incinerator ash under this section for temporary
15 storage or for disposal shall do all of the following:

16 (a) Manage the ash to control dust.

17 (b) Manage the landfill to control track out.

18 (c) Manage all access roads within the landfill to control
19 dust.

20 (d) Only dispose of wet ash in the landfill.

21 (e) If the ash was in temporary storage under subsection
22 (7), rewet the ash prior to transporting the ash to the permanent
23 landfill.

24 (10) As an alternative to disposal described in
25 subsection (2), the owner or operator of a municipal solid waste
26 incinerator may process municipal solid waste incinerator ash
27 through mechanical or chemical methods, or both, to substantially

1 diminish the toxicity of the ash or its constituents or limit the
2 leachability of the ash or its constituents to minimize threats
3 to human health and the environment, if processing is performed
4 on the site of the municipal solid waste incinerator or at the
5 site of a landfill described in subsection (2); the process has
6 been approved by the director as provided by rule; and the ash is
7 tested after processing in accordance with a protocol approved by
8 the director as provided by rule. The director shall approve the
9 process and testing protocol under this subsection only if the
10 process and testing protocol will protect human health and the
11 environment. In making this determination, the director shall
12 consider all potential pathways of human and environmental expo-
13 sure, including both short-term and long-term, to constituents of
14 the ash that may be released during the reuse or recycling of the
15 ash. The director shall consider requiring methods to determine
16 the leaching, total chemical analysis, respirability, and toxic-
17 ity of reused or recycled ash. A leaching procedure shall
18 include testing under both acidic and native conditions. If
19 municipal solid waste incinerator ash is processed in accordance
20 with the requirements of this subsection and the processed ash
21 satisfies the testing protocol approved by the director as pro-
22 vided by rule, the ash may be disposed of in a type II landfill,
23 as defined by R 299.4105 of the Michigan administrative code,
24 licensed under this part or may be used in any manner approved by
25 the director. If municipal solid waste incinerator ash is pro-
26 cessed as provided in this subsection, but does not satisfy the

1 testing protocol approved by the director as provided by rule,
2 the ash shall be disposed of in accordance with subsection (2).

3 (11) The disposal of municipal solid waste incinerator ash
4 within a landfill that is in compliance with subsection (2) does
5 not constitute a new proposal for which a new construction permit
6 is required under section 6310, if a construction permit has pre-
7 viously been issued under section 6309 for the landfill and the
8 owner or operator of the landfill submits 6 copies of an operat-
9 ing license amendment application to the director for approval.
10 The operating license amendment application shall include revised
11 plans and specifications for all facility modifications including
12 a leachate disposal plan, an erosion control plan, and a dust
13 control plan that is part of the operating license amendment.
14 The dust control plan shall contain sufficient detail to ensure
15 that dust emissions are controlled by available control technolo-
16 gies that reduce dust emissions by a reasonably achievable amount
17 to the extent necessary to protect human health and the
18 environment. The dust control plan shall provide for the ash to
19 be wet during all times that the ash is exposed to the atmosphere
20 at the landfill or otherwise to be covered by daily cover materi-
21 al; for dust emissions to be controlled during dumping, grading,
22 loading, and bulk transporting of the ash at the landfill; and
23 for dust emissions from access roads within the landfill to be
24 controlled. With the exception of a landfill that is in exis-
25 tence on June 12, 1989 that the director determines is otherwise
26 in compliance with this section, the owner or operator of the
27 landfill shall obtain the operating license amendment prior to

1 initiating construction. Prior to operation, the owner or
2 operator of a landfill shall submit to the director or the
3 director's designee certification from a licensed professional
4 engineer that the landfill has been constructed in accordance
5 with the approved plan and specifications. At the time the
6 copies are submitted to the director, the owner or operator of
7 the landfill shall send a copy of the operating license amendment
8 application to the municipality where the landfill is located.
9 At least 30 days prior to making a final decision on the operat-
10 ing license amendment, the director shall hold at least 1 public
11 meeting in the vicinity of the landfill to receive public
12 comments. Prior to a public meeting, the director shall publish
13 notice of the meeting in a newspaper serving the local area. The
14 director shall issue a final decision on an operating license
15 amendment application within 120 days after the director receives
16 an administratively complete application.

17 (12) Once every other month, the owner or operator of a
18 municipal solid waste incinerator shall collect a 24-hour compos-
19 ite sample of the municipal solid waste incinerator ash generated
20 by the incinerator. By July 12, 1989, the owner or operator of a
21 municipal solid waste incinerator shall submit a protocol for
22 sample collection to the director for approval. Each sample
23 shall be collected according to the approved protocol. The owner
24 or operator shall perform an analysis of the collected sample for
25 trace metals as totals by acid digestion using analytical methods
26 described in SW-846 "test methods for evaluating solid waste,
27 third edition". The purpose of these tests is to determine the

1 changes in characteristics of municipal solid waste incinerator
2 ash from source separation initiatives over the life of the
3 facility. If fly ash generated by the municipal solid waste
4 incinerator is processed separately from the bottom ash, the
5 owner or operator shall perform separate tests on the fly ash and
6 the bottom ash. The owner or operator of the municipal solid
7 waste incinerator shall submit these test results to the director
8 within 60 days after the sample was collected.

9 (13) The owner or operator of a municipal solid waste incin-
10 erator or a disposal area that receives municipal solid waste
11 incinerator ash shall allow the director or an agent or employee
12 of the director access to the facility for the purpose of super-
13 vising the collection of samples or obtaining samples of ash to
14 test or to monitor air quality at the facility.

15 (14) As used in subsection (2), "landfill" means a landfill
16 or a specific portion of a landfill.

17 Sec. 6343. (1) If municipal solid waste incinerator ash is
18 transported, it shall be transported in compliance with
19 section 720 of the Michigan vehicle code, Act No. 300 of the
20 Public Acts of 1949, being section 257.720 of the Michigan
21 Compiled Laws.

22 (2) If municipal solid waste incinerator ash is transported
23 by rail, it shall be transported in covered, leak proof railroad
24 cars.

25 (3) The outside of all vehicles and accessory equipment used
26 to transport municipal solid waste incinerator ash shall be kept
27 free of the ash.

1 Sec. 6344. (1) The department shall compile a list of
2 approved laboratories that are capable of performing the test
3 provided for in section 6342(2)(e).

4 (2) The department shall publish the list compiled under
5 subsection (1) on or before July 1, 1989, and shall thereafter
6 make the list available to any person upon request.

7 (3) Except as provided in subsection (4), a test conducted
8 by an approved laboratory from the list compiled under subsection
9 (1) is definitive for purposes of this part.

10 (4) If the department has reason to believe that test
11 results provided by an approved laboratory are fraudulent or that
12 a test was carelessly performed, the department may conduct its
13 own test, or may have an additional test performed at the
14 department's expense.

15 Sec. 6345. Beginning June 21, 1993, a municipal solid waste
16 incinerator shall not incinerate used oil. As used in this sec-
17 tion, used oil has the meaning ascribed to this term in part 67.

18 Sec. 6346. (1) The director or a health officer may request
19 that the attorney general bring an action in the name of the
20 people of the state, or a municipality or county may bring an
21 action based on facts arising within its boundaries, for any
22 appropriate relief, including injunctive relief, for a violation
23 of this part or rules promulgated pursuant to this part.

24 (2) In addition to any other relief provided by this sec-
25 tion, the court may impose on any person who violates any provi-
26 sion of this part or rules promulgated under this part or fails
27 to comply with any permit, license, or final order issued

1 pursuant to this part a civil fine of not more than \$10,000.00
2 for each day of violation.

3 (3) In addition to any other relief provided by this sec-
4 tion, the court may order a person violating this part or the
5 rules promulgated under this part either to restore or to pay to
6 the state an amount equal to the cost of restoring the natural
7 resources of this state affected by the violation to their origi-
8 nal condition before the violation, and to pay to the state the
9 costs of surveillance and enforcement incurred by the state as a
10 result of the violation.

11 (4) This part does not preclude any person from commencing a
12 civil action based on facts which may also constitute a violation
13 of this part or the rules promulgated under this part.

14 Sec. 6347. (1) In order for a county to effectively carry
15 out the planning responsibilities designated under this part, a
16 grant program is established to provide financial assistance to
17 county or regional solid waste management planning agencies.
18 Municipalities joined together with interlocal agreements relat-
19 ing to solid waste management plans, within a county having a
20 city of a population of more than 1 million, are eligible for a
21 separate planning grant in addition to those granted to
22 counties. This separate grant allocation provision does not
23 alter the planning and approval process requirements for county
24 plans as specified in this part. Eighty percent of the money for
25 the program not provided for by federal funds shall be appropri-
26 ated annually by the legislature from the general fund of the
27 state and 20% shall be appropriated by the applicant. Grant

1 funds appropriated for local planning may be used by the director
2 if the director finds it necessary to invoke the director's
3 authority to develop a local plan under section 6333(6). The
4 director shall promulgate rules for the distribution of the
5 appropriated funds.

6 (2) In order for a certified health department to effec-
7 tively carry out the responsibilities designated under this part,
8 an annual grant shall be appropriated by the legislature from the
9 general fund of the state to provide financial assistance to a
10 certified health department. A certified health department is
11 eligible to receive 100% of reasonable personnel costs as deter-
12 mined by the department based on criteria established by rule.
13 The director shall promulgate rules for the distribution of the
14 appropriated funds.

15 Sec. 6348. (1) This part is not intended to prohibit the
16 continuation of the private sector from doing business in solid
17 waste disposal and transportation. This part is intended to
18 encourage the continuation of the private sector in the solid
19 waste disposal and transportation business when in compliance
20 with the minimum requirements of this part.

21 (2) This part is not intended to prohibit salvaging.

22 Sec. 6349. A person who violates this part, a rule promul-
23 gated under this part or a condition of a permit, license, or
24 final order issued pursuant to this part is guilty of a misde-
25 meanor, punishable by a fine of not more than \$1,000.00 for each
26 violation and costs of prosecution and, if in default of payment

1 of fine and costs, imprisonment for not more than 6 months. Each
2 day upon which a violation occurs is a separate offense.

3 PART 65 SCRAP TIRES

4 Sec. 6501. As used in this part:

5 (a) "Collection site" means a site, other than a landfill,
6 that contains either of the following:

7 (i) One or more pieces of adjacent real property where 500
8 or more scrap tires are accumulated and that is not associated
9 with a retail operation as provided in subparagraph (ii).

10 (ii) One or more pieces of adjacent real property where
11 1,500 or more scrap tires are accumulated if that property is
12 adjacent to and owned or leased by a person who is in the busi-
13 ness of selling tires at retail.

14 (b) "Fund" means the scrap tire regulatory fund created in
15 section 6508.

16 (c) "Landfill" means that term as it is defined in part 63.

17 (d) "Scrap tire" means a tire that is no longer being used
18 for its original intended purpose.

19 (e) "Scrap tire hauler" means a person who, as part of a
20 commercial business, transports scrap tires.

21 (f) "Scrap tire processor" means a person engaged in the
22 business of storing, buying, or otherwise acquiring scrap tires,
23 and reducing their volume by shredding or otherwise facilitating
24 recycling or resource recovery techniques for scrap tires. A
25 scrap tire processor includes a person who, in addition to pro-
26 cessing the scrap tires, incinerates the tires or converts the
27 tires into a product or another end use.

1 (g) "Tire" means a continuous solid or pneumatic rubber
2 covering encircling the wheel of a tractor, other farm machinery,
3 or a vehicle.

4 (h) "Tire storage area" means a location within a collection
5 site where tires are accumulated.

6 (i) "Vehicle" means every device in, upon, or by which any
7 person or property is or may be transported or drawn upon a high-
8 way, excepting devices exclusively moved by human power or used
9 exclusively upon stationary rails or tracks and excepting a
10 mobile home as defined in section 2 of the mobile home commission
11 act, Act No. 96 of the Public Acts of 1987, being section
12 125.2302 of the Michigan Compiled Laws.

13 Sec. 6502. A person shall not discard a tire on any proper-
14 ty, other than property owned by that person, without the written
15 permission of the person who owns the property.

16 Sec. 6503. (1) Beginning January 1, 1992, a person who
17 accumulates less than 2,500 scrap tires at a collection site that
18 are not stored in a building or stored in a covered vehicle shall
19 comply with all of the following:

20 (a) Only tires shall be accumulated in a tire storage area.

21 (b) Except as provided in subdivision (f), the tires shall
22 be accumulated in piles no greater than 15 feet in height with
23 horizontal dimensions no greater than 200 by 40 feet.

24 (c) Except as provided in subdivision (f), the tires shall
25 not be within 20 feet of the property line or within 60 feet of a
26 building or structure.

1 (d) The tires shall be maintained in a manner that limits
2 the potential of mosquito breeding by complying with 1 or more of
3 the following:

4 (i) The tires shall be covered by plastic sheets or other
5 impermeable barriers to prevent the accumulation of
6 precipitation.

7 (ii) The tires shall be chemically treated to eliminate mos-
8 quito breeding.

9 (iii) The tires shall be shredded or chipped into pieces no
10 larger than 4 inches by 6 inches and stored in piles that allow
11 complete water drainage.

12 (e) Except as provided in subdivision (f), there shall be a
13 minimum separation of 20 feet between tire piles. The open space
14 between tire piles shall at all times be free of rubbish, equip-
15 ment, and other materials.

16 (f) Tire piles shall be accessible to fire fighting
17 equipment. If the requirement of this subdivision is met, the
18 local fire department that serves the jurisdiction in which the
19 collection site is located may approve a variance from the
20 requirements of subdivisions (b), (c), and (e). Such an approv-
21 al, if granted, shall be in writing.

22 (g) The person accumulating the tires shall maintain a
23 surety bond in favor of the state in an amount, as determined by
24 the department, sufficient to cover the cost of removing the
25 tires from the collection site in the case of an emergency at the
26 collection site or the insolvency of the person accumulating the

1 tires. However, for collection sites with fewer than 2,500
2 tires, the surety bond shall not exceed \$2,500.00.

3 (2) Beginning January 1, 1992, a person who accumulates at
4 least 2,500 but less than 100,000 scrap tires at a collection
5 site that are not stored in a building shall comply with all of
6 the following:

7 (a) All of the requirements of subsection (1).

8 (b) The area in which the tires are accumulated shall be
9 completely enclosed with a fence that is at least 6 feet tall
10 with lockable gates and is designed to prevent easy access.

11 (c) An earthen berm not less than 5 feet in height shall be
12 positioned outside of the fence in which the tires are enclosed.

13 (d) The collection site shall contain sufficient drainage so
14 that water does not pool or collect on the property.

15 (e) The approach road to the tire storage area and on-site
16 access roads to the tire storage area shall be of all-weather
17 construction and maintained in good condition so that it is pass-
18 able at all times for fire fighting equipment vehicles.

19 (f) Tire storage areas shall be mowed regularly or otherwise
20 kept free of weeds, vegetation, and other growth at all times.

21 (g) An emergency procedures plan shall be prepared and dis-
22 played at the collection site. The plan shall include telephone
23 numbers of the local fire and police departments. The plan shall
24 be reviewed by the local fire department prior to being posted.

25 (3) Beginning January 1, 1992, a person who accumulates
26 100,000 or more scrap tires at a collection site that are not
27 stored in a building shall comply with all of the requirements of

1 subsections (1) and (2) and that person shall operate as a scrap
2 tire processor.

3 Sec. 6504. (1) By July 1, 1991 and by January 31 of each
4 year thereafter, a person who owns a collection site shall annu-
5 ally register with the department. The registration shall be on
6 a form provided by the department and shall contain information
7 as required by the department.

8 (2) A \$200.00 registration fee shall accompany each annual
9 registration under this section. The department shall deposit
10 money collected under this section into the state treasury to be
11 credited to the fund.

12 Sec. 6505. (1) By July 1, 1991 and by January 31 of each
13 year thereafter, a scrap tire hauler shall register with the
14 department on a form provided by, and containing the information
15 required by, the department.

16 (2) A person who is in the business of selling tires at
17 retail who contracts for the removal of scrap tires shall con-
18 tract with a scrap tire hauler who is registered under
19 subsection (1).

20 Sec. 6506. The department shall contact each local health
21 department as defined in section 1105 of the public health code,
22 Act No. 368 of the Public Acts of 1978, being section 333.1105 of
23 the Michigan Compiled Laws, and shall request that local health
24 department to provide a list, including the location and owner,
25 if known, of all known significant tire piles within its
26 jurisdiction.

1 Sec. 6507. By January 1, 1996, the department shall report
2 to the legislature on all of the following:

3 (a) The effectiveness of this part and whether the depart-
4 ment recommends any changes in this part.

5 (b) The volume of tires that are being disposed of in land-
6 fills and whether the department recommends banning tires from
7 landfills in the future.

8 (c) Whether a manifest system to track scrap tires would be
9 useful in the enforcement of this part.

10 (d) Whether, under certain circumstances, the fund should be
11 used for the cleanup of abandoned scrap tires on land owned by
12 persons other than the state or a municipality or county.

13 (e) Whether sufficient collection sites are available for
14 the disposal of scrap tires from private individuals.

15 Sec. 6508. (1) The scrap tire regulatory fund is created in
16 the state treasury. The fund shall receive money as provided by
17 law and any gifts or contributions to the fund. The state trea-
18 surer shall direct the investment of the fund. Interest and
19 earnings of the fund shall be credited to the fund. Money in the
20 fund at the close of the fiscal year shall remain in the fund and
21 shall not revert to the general fund.

22 (2) Money in the fund shall be used, upon appropriation, for
23 all of the following purposes:

24 (a) Not more than 50% of the money in the fund, annually,
25 for administrative costs of the department associated with this
26 part including the implementation and enforcement of this part,

1 or for the employment of not more than 13.5 full-time equated
2 positions.

3 (b) For the administrative costs of the secretary of state
4 associated with the collection of the tire disposal surcharge
5 pursuant to section 806 of the Michigan vehicle code, Act No. 300
6 of the Public Acts of 1949, being section 257.806 of the Michigan
7 Compiled Laws.

8 (c) For the cleanup or collection of abandoned scrap tires
9 on land owned by the state or a city, village, township, or
10 county.

11 (3) The department shall annually report to the legislature
12 on the utilization of revenues of the fund.

13 Sec. 6509. (1) A person who violates this part is guilty of
14 a misdemeanor, punishable by imprisonment for not more than 90
15 days, or a fine of not more than \$10.00 for each tire that is
16 disposed of or accumulated in violation of this part, or both.

17 (2) In addition to, or as an alternative to, the penalties
18 provided under subsection (1), the court may order a person who
19 violates this part to perform not more than 100 hours of commu-
20 nity service.

21 (3) Each day that a violation continues may constitute a
22 separate violation.

23 (4) A law enforcement officer or a conservation officer may
24 issue an appearance ticket to a person who is in violation of
25 this part.

PART 67 USED OIL RECYCLING

Sec. 6701. As used in this part:

(a) "Motor oil" means oil used as a lubricant in a motor vehicle.

(b) "Oil" means petroleum based oil.

(c) "Recycle" means to prepare used oil for reuse as a petroleum product by refining, rerefining, reclaiming, reprocessing, or other means to utilize used oil in a manner that substitutes for a petroleum product made from new oil, if the preparation or use is operationally safe, environmentally sound, and complies with the law, rules, and regulations of this state and the United States.

(d) "Used oil" means oil which through use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

Sec. 6702. The director shall implement a plan to promote the recycling of motor oil by the public and private sectors. The director shall conduct a public education program to inform the public and private sectors of the need for, and benefit of, collecting and recycling used oil in order to conserve resources and protect the natural resources of this state.

Sec. 6703. (1) The director of the department of management and budget shall formulate and implement a plan to recycle the motor oil used by the departments and agencies of this state.

(2) The director shall conduct a demonstration used oil recycling project that does all of the following:

1 (a) Provides for a system of used oil recycling tanks or
2 barrels for use by the general public. The recycling tanks or
3 barrels shall be located in designated state owned vehicle main-
4 tenance garages or other publicly owned structures that the
5 director determines meet both of the following criteria:

6 (i) Are locations where used oil is generated from oil
7 changes for state owned vehicles, or vehicles operated under con-
8 tracts with this state.

9 (ii) Are locations where oil recycling services are not oth-
10 erwise available to the general public.

11 (b) Promotes public awareness of the availability to the
12 general public of recycling tanks or barrels for used oil.

13 (3) The director shall establish a project plan for conduct-
14 ing the demonstration project provided for in subsection (2).
15 The project plan shall include the number of locations, proposed
16 sites, methods of public notice, security procedures, and model
17 language for cooperative agreements with other state agencies for
18 use of their facilities in the demonstration project.

19 (4) Funding necessary to implement this part may come from
20 any lawful source, including appropriations, funds from private
21 sources, and funds generated from the sale of general obligation
22 bonds.

23 Sec. 6704. (1) A person shall not dispose of, or cause the
24 disposal of, used oil by dumping onto the ground, discharging,
25 dumping, or depositing used oil into sewers, drainage systems,
26 surface or groundwaters, or other waters of this state, or,
27 except as provided in subsection (2), by incineration, or as

1 refuse, or onto any public or private land unless the land is
2 designated by the state or an agency or political subdivision of
3 the state as a collection facility for the disposal, dumping, or
4 deposit of used oil and the used oil is placed in a receptacle or
5 container installed or located at the collection facility.

6 (2) Subsection (1) does not apply to the use of used oil in
7 an incinerator or other heater that is operated for purposes of
8 providing heat or energy, or as a rust preventive coating on farm
9 or construction equipment.

10 (3) Notwithstanding subsection (2), beginning March 28,
11 1994, used oil shall not be disposed of in a municipal solid
12 waste incinerator as defined in part 63.

13 (4) Beginning on July 1, 1991, a person who violates this
14 section is guilty of a misdemeanor, punishable by imprisonment
15 for 90 days, or a fine of not more than \$1,000.00, or both. In
16 place of a sentence provided in this subsection, the court may
17 order that the defendant engage in court supervised
18 recycling-related labor for a number of hours determined by the
19 court, including, but not limited to, oil recycling. A violation
20 of this section by a person, other than an individual, is punish-
21 able by a fine of not more than \$2,500.00.

22 (5) This section does not prohibit enforcement actions under
23 other state or federal laws applicable to an activity described
24 in this section.

25 (6) The department shall establish criteria to be used in
26 designating collection facilities under subsection (1). In
27 developing the criteria, the department shall seek to encourage

1 private and local collection facilities as an integral part of
2 the department's efforts to establish a statewide network of col-
3 lection facilities as required in section 6705(a).

4 Sec. 6705. In addition to the other powers and duties of
5 the department under this part, by January 1, 1991, the depart-
6 ment shall develop and submit to the legislature a comprehensive
7 plan that does all of the following:

8 (a) Provides for a network of private, state, and local col-
9 lection facilities on a statewide basis by July 1, 1991 to facil-
10 itate compliance with section 6704.

11 (b) Provides for a publicity program to assure that the
12 public is aware of the requirements of section 6704, the loca-
13 tion of collection facilities, and the penalties for violating
14 section 6704.

15 (c) Provides 1 or more proposed funding mechanisms that the
16 director considers feasible to assure that an operational collec-
17 tion facility network is available statewide by July 1, 1991.

18 PART 69 DISPOSAL OF BATTERIES

19 Sec. 6901. As used in this part:

20 (a) "Distributor" means a person who sells batteries to
21 retailers in this state.

22 (b) "Lead acid battery" means a storage battery in which the
23 electrodes are grids of lead containing lead oxides that change
24 in composition during charging and discharging, and the electro-
25 lyte is dilute sulfuric acid.

26 (c) "Manufacturer" means a person who produces batteries for
27 sale in this state.

1 (d) "Mercury battery" means a dry cell storage battery that
2 delivers an essentially constant output voltage throughout its
3 useful life by means of a chemical reaction between zinc and mer-
4 curic oxide.

5 (e) "Nickel cadmium battery" means a sealed storage battery
6 having a nickel anode, a cadmium cathode, and an alkaline elec-
7 trolyte, widely used in cordless appliances, and may serve as a
8 primary battery.

9 (f) "Retailer" means a person who sells or offers to sell
10 batteries to consumers within this state.

11 (g) "Solid waste disposal area" means a disposal area as
12 defined in part 63.

13 Sec. 6902. (1) A person other than a retailer, distributor,
14 or manufacturer shall not dispose of a lead acid battery except
15 by delivery to 1 of the following:

16 (a) A retailer.

17 (b) A distributor.

18 (c) A manufacturer.

19 (d) A collection, recycling, or smelting facility approved
20 by the department.

21 (2) A retailer shall not dispose of used lead acid batteries
22 except by delivery to 1 of the following:

23 (a) A distributor or his or her authorized agent.

24 (b) A collection, recycling, or smelting facility approved
25 by the department.

26 (c) A manufacturer.

1 (3) A distributor shall dispose of lead acid batteries by
2 delivery to a manufacturer or to a collection, recycling, or
3 smelting facility approved by the department.

4 (4) A manufacturer shall dispose of lead acid batteries by
5 delivery to a recycling or smelting facility approved by the
6 department.

7 Sec. 6903. A retailer of lead acid batteries shall do all
8 of the following:

9 (a) Accept, at or near the point at which lead acid batte-
10 ries are offered for sale, in a quantity at least equal to the
11 number of new lead acid batteries sold by the retailer, used lead
12 acid batteries from customers, if offered by the customers.

13 (b) Post a written notice in a location that is readily vis-
14 ible to customers within the retail establishment that is at
15 least 8-1/2 inches by 11 inches in size and contains the univer-
16 sal recycling symbol and essentially all of the following:

17 (i) Recycle your used lead acid batteries.

18 (ii) It is illegal to discard a lead acid battery except by
19 delivery to a retailer, a distributor, a manufacturer, or a col-
20 lection, recycling, or smelting facility approved by the
21 department.

22 (iii) State law requires retailers to accept used lead acid
23 batteries upon the purchase or within 30 calendar days of the
24 purchase of a lead acid battery.

25 (c) After January 1, 1993, the notice described in
26 subdivision (b) shall also include information pertaining to the

1 required deposit for lead acid batteries and the availability of
2 refunds under this part.

3 (d) The format, design, and wording of the notice described
4 in this section shall be provided to retailers of lead acid bat-
5 teries by the department.

6 Sec. 6904. (1) The department shall produce, print, and
7 make available to retailers notices required by section 6903.

8 (2) A retailer who fails to post a notice required by this
9 part following warning by the department is subject to a civil
10 fine of \$25.00 per day of violation.

11 (3) A default in the payment of a civil fine ordered under
12 this part may be remedied by any means authorized under the
13 revised judicature act of 1961, Act No. 236 of the Public Acts of
14 1961, being sections 600.101 to 600.9947 of the Michigan Compiled
15 Laws.

16 Sec. 6905. (1) A distributor shall accept used lead acid
17 batteries from retailers in a quantity at least equal to the
18 number of new lead acid batteries sold by the distributor.

19 (2) A distributor accepting lead acid batteries from a
20 retailer as required under this section shall remove the lead
21 acid batteries from the point of collection within 90 days of
22 receiving the batteries.

23 Sec. 6906. (1) Beginning on January 1, 1993, a person who
24 purchases a lead acid battery from a retailer shall exchange a
25 used lead acid battery for the battery purchased. If a person
26 purchasing a lead acid battery does not exchange a used lead acid
27 battery, the purchaser shall pay to the retailer a deposit of

1 \$6.00 and shall receive from the retailer a voucher approved by
2 the retailer. If within 30 calendar days of purchase of a lead
3 acid battery the person who purchased a lead acid battery returns
4 to the retailer any used lead acid battery, accompanied by the
5 voucher, he or she is be entitled to a full refund of the \$6.00
6 deposit. If the person returns a used lead acid battery, accom-
7 panied by a voucher that was approved by the retailer who sold
8 the battery, to a collection, recycling, or smelting facility
9 approved by the department, he or she is entitled to a full
10 refund of the \$6.00 deposit and the collection, recycling, or
11 smelting facility may seek from the battery retailer who issued
12 the original voucher reimbursement for the \$6.00 deposit that was
13 refunded.

14 (2) A deposit received by a retailer under subsection (1)
15 that is unredeemed at the time of purchase or within 30 calendar
16 days of purchase, minus a 1/2% deposit administration fee that
17 may be retained by the retailer, shall escheat to the state on a
18 quarterly basis and shall be deposited in the environmental
19 response fund established in section 4509.

20 (3) The requirements of this section do not apply to a
21 retailer who sells a lead acid battery as a component part within
22 a motorized vehicle sold by that person.

23 Sec. 6907. (1) The department shall enforce this part.

24 (2) A person other than a retailer, distributor, or manufac-
25 turer who violates section 2 by improperly disposing of lead acid
26 batteries is guilty of a misdemeanor, punishable by a fine of not

1 more than \$25.00, plus the costs of prosecution. Each battery
2 that is unlawfully disposed of is a separate violation.

3 (3) Except as otherwise provided in this part, a retailer,
4 manufacturer, or distributor who violates this part is guilty of
5 a misdemeanor, punishable by imprisonment for not more than 60
6 days or a fine of not more than \$1,000.00, or both, plus the
7 costs of prosecution.

8 PART 71 LIQUID INDUSTRIAL WASTES

9 Sec. 7101. As used in this part:

10 (a) "Commission" means the water resources commission, its
11 staff, or its designated representative.

12 (b) "Liquid industrial waste" means any liquid waste, other
13 than unpolluted water, that is produced by, or incident to, or
14 results from an industrial or commercial activity or the conduct
15 of any enterprise.

16 (c) "Tank" means any container that is placed on a vehicle
17 to transport liquid industrial waste.

18 Sec. 7102. A person shall not engage in or carry on the
19 business of removing liquid industrial waste from the premises of
20 another person unless he or she is licensed as provided in this
21 part. A person who engages in or carries on the business of
22 removing liquid industrial waste as described in this part shall
23 be bonded as provided in this part.

24 Sec. 7103. A person shall not engage, employ, or contract
25 with any other person except a licensee under this part, to
26 remove liquid industrial wastes from his or her premises.

1 Sec. 7104. A person who engages, employs or contracts with
2 any other person to remove liquid waste from his or her premises
3 shall maintain detailed records of all such waste removals effec-
4 tuated on forms provided by the commission and shall submit this
5 information in the detail and with the frequency required by the
6 commission.

7 Sec. 7105. This part does not prevent the removal of liquid
8 industrial waste from the premises of another person by a munici-
9 pal waste collection and treatment entity and does not prevent a
10 person from contracting or otherwise arranging with a municipal
11 waste collection and treatment entity for that removal.

12 Sec. 7106. Subject to section 7107 and before engaging in
13 the business of removing liquid industrial waste from the
14 premises of another, a person shall obtain a license using an
15 application blank prepared by the commission. The application
16 shall be accompanied by a license fee of \$100.00 and by a surety
17 bond covering the period and any renewal thereof for which the
18 license is issued by a surety company registered in the state, to
19 indemnify the commission for the abatement of pollution of waters
20 that results from any improper disposal of industrial waste by
21 the licensee. The bonds shall be \$15,000.00 for residents of the
22 state and \$30,000.00 for nonresidents. The commission shall be
23 the obligee and the bond shall be for the benefit and purpose to
24 indemnify the state for the elimination of hazardous or nuisance
25 conditions and for the abatement of any pollution of waters that
26 results from the improper disposal of industrial waste by the
27 licensee. In lieu of surety bonds, the licensee may deposit cash

1 or other securities acceptable to the commission in the required
2 amounts. The surety, upon 30 days' notice in writing to the com-
3 mission and to the licensee, may cancel a bond, but a cancella-
4 tion does not affect any rights which have accrued on the bond
5 before the effective date of the cancellation.

6 Sec. 7107. A person licensed pursuant to section 6131 who
7 transports hazardous waste within this state and also transports
8 liquid industrial waste is exempt from the business license and
9 surety bond requirements of section 7106, but is subject to all
10 other provisions of this part and rules promulgated under this
11 part, including those pertaining to vehicle licensure.

12 Sec. 7108. The commission shall issue a license to an
13 applicant, if after conducting an investigation as it considers
14 necessary, the commission is satisfied that the applicant has the
15 qualifications, experience, reputation, and equipment to perform
16 the services in a manner not detrimental to the public interest,
17 in a way that will not cause unlawful pollution of the waters of
18 the state, and meets the bonding requirements of this part.

19 Sec. 7109. (1) All trucks or other vehicles used to trans-
20 port or carry liquid industrial wastes shall carry within the
21 truck or vehicle a license issued by the commission which shall
22 be made available for inspection by a representative of the com-
23 mission or any law enforcement agent.

24 (2) An application for a vehicle license required under this
25 section shall state the make, model, and year of the vehicle, and
26 the capacity of the tank used in transporting industrial wastes
27 and any other information required by the commission. An

1 application for a vehicle license shall be accompanied by a
2 license fee of \$10.00 for each vehicle sought to be licensed.
3 The license fee is payable to the state. The commission shall
4 issue a license to an applicant if, after conducting an investi-
5 gation as it considers necessary, the commission is satisfied
6 that the truck or vehicle and equipment is proper and adequate
7 for the purpose. The license is not transferable from 1 vehicle
8 to another. In addition to the vehicle license, which is carried
9 on the vehicle at all times, there shall be painted on both sides
10 of the vehicle in letters not less than 2 inches high the words
11 "licensed industrial waste hauling vehicle". These words shall
12 be followed with the vehicle license number. Directly adjacent
13 to the words and vehicle license number a seal furnished by the
14 commission shall be affixed that designates the year for which
15 the license was issued. The year on the seal shall correspond to
16 the year that appears on the license plate of the vehicle.

17 (3) All licenses issued under this part expire on the last
18 day of February of each year. Application for renewal of a
19 license may be made after November 30 of each year. The fee for
20 renewal shall be the same as for an original license.

21 Sec. 7110. (1) The tank on a vehicle required to be
22 licensed under this part shall be kept tightly closed in transit,
23 to prevent the escape of contents or odors and the outside of all
24 vehicles and accessory equipment shall be kept clean.

25 (2) The licensee shall dispose of all wastes in conformance
26 with part 11.

1 (3) The licensee shall keep records of all trips where the
2 pickup, hauling, or disposal of liquid wastes are involved. The
3 records shall state the date, source of the waste, quantity,
4 type, and the point and method of disposal, and total mileage of
5 the trip. Trip records for the last 2 months shall be carried on
6 the vehicle for inspection. The licensee shall preserve trip
7 records for 2 years.

8 (4) The licensee shall not dispose of wastes onto or into
9 the ground except at locations specifically approved by the
10 commission. Waste shall not be placed in a location where the
11 waste may enter any public or private drain, pond, stream, or
12 other body of surface water or groundwater.

13 Sec. 7111. If the commission determines hazardous or nui-
14 sance conditions or that unlawful pollution of the waters of the
15 state has resulted or may result from the handling or disposal of
16 liquid industrial wastes by a licensee, it shall first notify the
17 licensee and afford him or her with the opportunity to take cor-
18 rective action or to abate the pollution or take the necessary
19 means to prevent the occurrence of unlawful pollution. If the
20 licensee does not effect the correction, abatement or prevention
21 within a reasonable time, the commission shall do so and is enti-
22 tled to indemnification by the bond for the actual costs of the
23 correction, abatement, or prevention.

24 Sec. 7112. (1) A person who violates this part may have his
25 or her license revoked by the commission.

26 (2) A person who is convicted of violating this part by a
27 court of competent jurisdiction shall be fined not less than

1 \$500.00 and costs of prosecution, and if the person defaults in
2 the payment of fine and costs, he or she shall be imprisoned for
3 not less than 10 days or more than 30 days. When the violation
4 is of a continuing nature, each day upon which a violation occurs
5 is a separate offense.

6 PART 75 WASTE MINIMIZATION

7 Sec. 7501. As used in this part:

8 (a) "Office" means the office of waste reduction.

9 (b) "Waste" means hazardous waste as defined in
10 section 6103; solid waste as defined in section 6306; liquid
11 industrial waste as defined in section 7101; discharges regulated
12 by part 11; and air contaminants regulated by part 39.

13 (c) "Waste reduction" means any practice, including, but not
14 limited to, an equipment or technology modification, a process or
15 procedure modification, a reformulation or redesign of a product,
16 a substitution of raw materials, or improved management, train-
17 ing, or inventory control, which is undertaken by a person to
18 reduce the volume or quantity or toxicity of waste that may be
19 released into the environment or that is treated at a location
20 other than the location where it is produced.

21 Sec. 7502. (1) The office of waste reduction is created
22 within the department to advise the director on methods of incor-
23 porating waste reduction goals within the department's regulatory
24 and permit programs, including data collection and analysis to
25 advance the concept and implementation of waste reduction.

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

1 Sec. 7503. (1) The office shall do all of the following:

2 (a) Identify opportunities to encourage waste reduction
3 through the department's regulatory programs.

4 (b) Identify opportunities to encourage waste reduction
5 through the department's permit programs.

6 (c) Identify how waste reduction efforts should be docu-
7 mented in environmental impact statements.

8 (d) Analyze and make recommendations on the value of impos-
9 ing statewide goals or goals for particular wastes, or both, for
10 waste reduction, minimum recycling standards, and waste treatment
11 standards.

12 (e) Publish an annual analysis of waste reduction efforts
13 and potentials in the state.

14 (2) In performing its responsibilities under subsection (1),
15 the office shall place a particular emphasis on in-plant waste
16 reduction.

17 (3) Consistent with the congressional declaration in section
18 1003(b) of subtitle A of the solid waste disposal act, title II
19 of Public Law 89-272, 42 U.S.C. 6902, that it is the national
20 policy of the United States that, wherever feasible, hazardous
21 waste is to be reduced or eliminated as expeditiously as possi-
22 ble, the office shall place a particular emphasis on the reduc-
23 tion of a waste that is a hazardous waste as defined in
24 section 6103.

25 Sec. 7504. (1) The office shall provide staff and services
26 to the hazardous waste policy committee created in part 61.

1 (2) The office shall complete the studies provided in
2 section 6110(3), upon the request of the hazardous waste policy
3 committee and shall provide the information generated by those
4 studies to the hazardous waste policy committee.

5 (3) The department shall assure that relevant information
6 received under section 313 of subtitle B of the emergency plan-
7 ning and community right-to-know act of 1986, title III of Public
8 Law 99-499, 42 U.S.C. 11023, is transmitted to the hazardous
9 waste policy committee by the office.

10 Sec. 7505. (1) Upon request, the office shall provide
11 information to the waste reduction assistance service created in
12 part 77 and to the department of commerce liaison created in
13 part 77.

14 (2) The director shall designate 1 individual from the
15 department to serve as a liaison between the department and the
16 waste reduction assistance service in the department of commerce
17 on all matters related to waste reduction.

18 Sec. 7506. The office shall prepare and deliver, prior to
19 January 1 of each year, a report detailing the efforts the office
20 has undertaken during the previous fiscal year to implement this
21 part. The annual report shall be delivered to the legislature,
22 the governor, and the chairpersons of the appropriations commit-
23 tees in the senate and the house of representatives for their use
24 in evaluating future appropriations for the office. The first
25 annual report shall include the information generated pursuant to
26 sections 7503 and 7504 and shall recommend changes in policies

1 and regulatory approaches which will encourage waste reduction.
2 Subsequent annual reports may include this information.

3 Sec. 7507. This part is repealed effective September 30,
4 1992.

5 PART 77 WASTE REDUCTION ASSISTANCE

6 Sec. 7701. As used in this part;

7 (a) "Committee" means the waste reduction advisory
8 committee.

9 (b) "Department" means the department of commerce.

10 (c) "Director" means the director of commerce.

11 (d) "Service" means the waste reduction assistance service
12 created in section 7702.

13 (e) "Waste" means hazardous waste as defined in
14 section 6103; solid waste as defined in section 6306; liquid
15 industrial waste as defined in section 7101; discharges regulated
16 by part 11; and air contaminants regulated by part 39.

17 (f) "Waste reduction" means any practice, including, but not
18 limited to, an equipment or technology modification, a process or
19 procedure modification, a reformulation or redesign of a product,
20 a substitution of raw materials, or improved management, train-
21 ing, or inventory control, which is undertaken by a person to
22 reduce the volume or quantity or toxicity of waste which may be
23 released into the environment or which is treated at a location
24 other than the location where it is produced.

25 Sec. 7702. (1) The waste reduction assistance service is
26 created within the department. The service shall inform, assist,
27 educate, and provide funding, as provided in this part, to

1 persons to facilitate a reduction in the amount of waste
2 generated in the state. The service shall place a particular
3 emphasis on in-plant waste reduction.

4 (2) The department shall employ personnel and provide staff
5 and services as are necessary to administer the service and to
6 implement this part.

7 Sec. 7703. (1) The service shall establish a waste reduction
8 information clearinghouse that shall do all of the following:

9 (a) Upon request, provide specific waste reduction informa-
10 tion to any person.

11 (b) Publish information describing waste reduction
12 technologies.

13 (c) Distribute available publications pertaining to waste
14 reduction.

15 (d) Sponsor waste reduction workshops targeted at specific
16 industries.

17 (e) Participate in conferences and meetings of business
18 organizations.

19 (f) Provide information and application forms as necessary
20 to fulfill the department's responsibilities under sections 7705
21 and 7706.

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

25 Sec. 7704. The service shall provide technical assistance
26 regarding waste reduction to business and industry throughout the
27 state and shall do all of the following:

1 (a) Provide instruction on self-conducted waste audits
2 pertaining to waste reduction.

3 (b) Provide consultant referrals pertaining to waste
4 reduction.

5 (c) Provide on-site assistance to business and industry per-
6 taining to waste reduction.

7 (d) Provide other information and assistance that is consid-
8 ered appropriate by the service.

9 Sec. 7705. (1) The department shall establish a waste
10 reduction grants program.

11 (2) Information and applications for grants provided by this
12 section shall be distributed upon request through the service.

13 Additionally, the service shall, upon request, make referrals and
14 provide information about other state agencies and programs and
15 federal agencies and programs where funding alternatives may be
16 available.

17 (3) An application for a grant under this section shall be
18 on a form provided by the department and contain information as
19 required by the director.

20 (4) The director, after the consideration of the recommenda-
21 tions of the committee, shall make waste reduction grants for
22 either or both of the following purposes:

23 (a) To fund projects that demonstrate new and emerging waste
24 reduction technologies. A grant made under this subdivision
25 shall require that information generated by the project is avail-
26 able to the service for distribution through the waste reduction
27 information clearinghouse created in section 7703.

1 (b) To fund waste reduction projects.

2 (5) The director, in making grants pursuant to this section,
3 shall consider all of the following:

4 (a) The severity of the waste problem being addressed.

5 (b) The extent that the technological development will
6 reduce waste at its source.

7 (c) The potential for the application of the waste reduction
8 technology to other persons.

9 (d) The ability of the applicant to contribute matching
10 funds.

11 (e) The percentage reduction of volume or quantity or toxic-
12 ity of waste that will be achieved.

13 (f) Whether the project is consistent with state law and
14 policy.

15 (g) Additional criteria as the director considers
16 appropriate.

17 Sec. 7706. (1) The department shall establish a waste
18 reduction research grants program.

19 (2) Information and applications for grants under this sec-
20 tion shall be distributed upon request through the service.

21 (3) An application for a grant under this section shall be
22 on a form provided by the department and shall contain informa-
23 tion required by the director.

24 (4) The director, after consideration of the recommendations
25 of the committee, shall make grants to colleges and universities,
26 nonprofit corporations, or industry associations or other persons

1 for industry specific research projects pertaining to waste
2 reduction.

3 (5) The director, in making grants pursuant to this section,
4 shall consider all of the following:

5 (a) The severity of the waste problem being addressed.

6 (b) The extent that the technological development will
7 reduce the volume or quantity or toxicity of waste generated.

8 (c) The potential for the application of waste reduction
9 technology to other persons or businesses.

10 (d) The ability of the applicant to contribute matching
11 funds.

12 (e) The percentage reduction of volume or quantity or toxic-
13 ity of waste that will be achieved.

14 (f) The likelihood of the applicant's project qualifying for
15 other research grants or subsequent research grants from other
16 sources.

17 (g) Whether the project is consistent with state law and
18 policy.

19 (h) Additional criteria as the director considers
20 appropriate.

21 Sec. 7707. (1) The waste reduction advisory committee is
22 created within the department. The committee shall consist of
23 the following members who shall be appointed by the governor with
24 the advice and consent of the senate:

25 (a) One individual from a major industry.

26 (b) One individual from a small business.

1 (c) One individual from an environmental organization.

2 (d) One individual who has knowledge and experience in waste
3 reduction methods and technology.

4 (e) One individual from the general public.

5 (2) The governor shall select 1 of the individuals appointed
6 in subsection (1) to serve as the chairperson of the committee.

7 The committee shall meet when necessary at the call of the
8 chairperson.

9 (3) Members of the committee shall be appointed for terms of
10 2 years each. However, of the members first appointed, 3 shall
11 be appointed to serve for terms of 3 years.

12 (4) A vacancy on the committee shall be filled in the same
13 manner as the original appointment. A member of the committee
14 whose term has expired shall not continue to serve as a member of
15 the committee unless he or she has been reappointed by the gover-
16 nor with the advice and consent of the senate.

17 (5) A meeting of the committee shall be held in compliance
18 with the open meetings act, Act No. 267 of the Public Acts of
19 1976, being sections 15.261 to 15.275 of the Michigan Compiled
20 Laws, and notice of the time, date, and place of the meeting
21 shall be given in the manner required by that act.

22 Sec. 7708. The committee shall do all of the following:

23 (a) Advise the service on the administration of the waste
24 reduction information clearinghouse and the technical assistance
25 program.

26 (b) Provide information to the service regarding waste
27 reduction technology.

1 (c) Review applications and make recommendations to the
2 director regarding grants available pursuant to sections 7705
3 and 7706.

4 Sec. 7709. The director shall designate 1 individual from
5 the department to serve as a liaison between the department and
6 the office of waste reduction in the department of natural
7 resources created in part 75 on all matters related to waste
8 reduction.

9 Sec. 7710. The service shall prepare and deliver, prior to
10 January 1 of each year, a report detailing the efforts the serv-
11 ice has undertaken during the previous fiscal year to implement
12 this part. The annual report shall be delivered to the legisla-
13 ture, the governor, and the chairpersons of the appropriations
14 committees in the senate and the house of representatives for
15 their use in evaluating future appropriations for the service.

16 Sec. 7711. This part is repealed effective September 30,
17 1992.

18 PART 81 LABELING OF PLASTIC PRODUCTS

19 Sec. 8101. As used in this part:

20 (a) "Degradable" means capable of being broken down by bio-
21 degradation, photodegradation, or chemical degradation into com-
22 ponent parts within 360 days under exposure to the elements.

23 (b) "Label" means a molded, imprinted, or raised symbol on
24 or near the bottom of a plastic product.

25 (c) "Plastic" means any material made of polymeric organic
26 compounds and additives that can be shaped by flow.

1 (d) "Plastic bottle" means a rigid plastic container with a
2 capacity of 16 ounces or more that has a neck that is smaller
3 than the body of the container.

4 (e) "Plastic product" means a plastic bottle and any other
5 rigid plastic container.

6 (f) "Rigid plastic container" means any container composed
7 predominantly of plastic resin and having a relatively inflexible
8 finite shape or form that directly holds a substance or material
9 and has a capacity of 8 ounces or more.

10 (g) "PETE" means polyethylene terephthalate.

11 (h) "HDPE" means high density polyethylene.

12 (i) "V" means vinyl.

13 (j) "LDPE" means low density polyethylene.

14 (k) "PP" means polypropylene.

15 (l) "PS" means polystyrene.

16 (m) "OTHER" means multi-layer.

17 (n) "D" means degradable.

18 Sec. 8102. (1) Beginning January 1, 1992, all plastic prod-
19 ucts sold in this state shall be labeled with a code indicating
20 the plastic resin used to produce the product. The code shall
21 consist of a number placed within a triangle of arrows with let-
22 ters placed below the triangle of arrows. The triangle shall be
23 equilateral, formed by 3 arrows with the apex of each point of
24 the triangle at the midpoint of each arrow, rounded with a short
25 radius. The pointer or arrowhead of each arrow shall be at the
26 midpoint of each side of the triangle with a short gap separating
27 the pointer from the base of the adjacent arrow. The triangle,

1 formed by the 3 arrows curved at their midpoints shall depict a
2 clockwise path around the code number. The triangle of arrows
3 shall be not less than 1/2 inch high or if the plastic product is
4 designed so that a triangle or arrows of not less than 1/2 inch
5 height cannot be added to the product, a smaller label may be
6 used if the label can be easily read. The code shall appear on
7 or near the bottom of the plastic product as follows:

8 (a) 1 PETE.

9 (b) 2 HDPE.

10 (c) 3 V.

11 (d) 4 LDPE.

12 (e) 5 PP.

13 (f) 6 PS.

14 (g) 7 OTHER.

15 (h) 8 D.

16 (2) The department shall maintain a list of the label code
17 provided in subsection (1) and shall provide a copy of that list
18 to any person upon request.

19 Sec. 8103. Additional staff shall not be hired by the
20 department for the purposes of enforcing this part.

21 Sec. 8104. (1) A person who violates this part is subject
22 to a civil fine of \$500.00 per violation.

23 (2) A default in the payment of a civil fine ordered under
24 this part may be remedied by any means authorized under the
25 revised judicature act of 1961, Act No. 236 of the Public Acts of
26 1961, being sections 600.101 to 600.9947 of the Michigan Compiled
27 Laws.

PART 83 DEGRADABLE PACKAGING FOR CONTAINERS

Sec. 8301. As used in this part:

(a) "Containers" means glass, metal, or plastic bottles, cans, jars, or other receptacles that contain any substance.

(b) "Degradable" means capable of being broken down by biodegradation, photodegradation, or chemical degradation into component parts within 360 days under exposure to the elements.

Sec. 8302. (1) A person shall not sell or offer for sale in this state containers connected to each other by a separate holding device that is constructed of plastic rings unless the device is degradable and bears a distinguishing symbol.

(2) A manufacturer of container holding devices that are constructed of plastic rings who sells or offers for sale or provides for the sale or offer for sale in this state of these devices shall design a distinguishing symbol indicating that the devices are degradable and shall register the distinguishing symbol with the department and provide the department with a sample of the device. The department may require test data that show that the device is degradable as required in this part.

(3) As used in this part, a separate holding device does not include a vacuum-packed wrapping that completely encases the containers that it connects.

Sec. 8303. A person who violates this part is guilty of a misdemeanor, punishable by a fine of \$500.00 for each day this part is violated.

PART 85 RECYCLING MAKES CENTS, OFFICE PAPER RECOVERY

Sec. 8501. As used in this part:

(a) "Recycled paper" and "recycled wastepaper" means a paper product that contains not less than 50% wastepaper.

(b) "Wastepaper" means any discarded paper that is generated after the completion of the paper manufacturing process, and, includes but is not limited to, trimmings, printed paper, cutting and converting paper, or post-consumer paper. Wastepaper does not include mill broke or other in-plant residual wastes.

Sec. 8502. (1) The department shall establish and implement a paper recycling system to recycle wastepaper products that are recyclable and for which there is an accessible and available market. The recycling system shall include the recyclable waste-paper products generated in the offices and other facilities of state departments and state agencies, the offices and other facilities of the legislature, and the judicial offices and other facilities within this state. The department may work with other state departments and hire private contractors to establish or implement all or a portion of the recycling system under this part. The paper recycling system established by the department shall provide for the recycling of wastepaper in the offices and facilities that participate in that system, in accord with the following schedule:

(a) January 1, 1989	20% or more.
(b) January 1, 1990	25% or more.
(c) January 1, 1992	50% or more.

1 (d) January 1, 2000 85% or more.

2 (2) The paper recycling system established by the department
3 shall provide for the expansion and improvement of any wastepaper
4 recycling system that exists on March 30, 1989 and for all of the
5 following:

6 (a) An aggressive program to locate and develop, if neces-
7 sary, markets for recyclable wastepaper products.

8 (b) An education program to assure that employees who par-
9 ticipate in the recycling system are knowledgeable about both of
10 the following:

11 (i) The importance of recycling paper.

12 (ii) The components of the paper recycling system and how
13 the system will impact each employee.

14 (c) The recovery of all wastepaper for which a market is
15 available and accessible.

16 (d) The separation of the recyclable wastepaper by the gen-
17 erator in close proximity to the point at which the paper product
18 enters the waste stream.

19 (e) A central collection system within each building or
20 office of facility that is participating in the recycling
21 system.

22 (f) The compiling of information and the preparation of an
23 annual written report to be sent to the governor, the senate
24 majority leader, the speaker of the house, and the chief justice
25 of the supreme court, detailing the implementation and operation
26 of the paper recycling system; the level of participation in the
27 paper recycling system of offices, facilities, and agencies

1 within each branch of government; the availability of markets for
2 the wastepaper collected; recommendations on how the market for
3 recycled paper can be stimulated; and recommendations regarding
4 whether the system can be and should be expanded.

5 Sec. 8503. The proceeds of the paper recycling system shall
6 be forwarded to the state treasurer and credited to the office
7 services revolving fund created in section 269 of the management
8 and budget act, Act No. 431 of the Public Acts of 1984, being
9 section 18.1269 of the Michigan Compiled Laws, to be utilized by
10 the department of management and budget to implement this part
11 and to reimburse other state departments that incur expenses
12 under this part.

13 PART 87 PLASTICS RECYCLING DEVELOPMENT FUND

14 Sec. 8701. As used in this part:

15 (a) "Consortium" means the plastics recycling development
16 consortium created in section 8702.

17 (b) "Fund" means the plastics recycling development fund
18 created in section 8704.

19 (c) "Plastic" means a material made of polymeric organic
20 compounds and additives that can be shaped by flow.

21 (d) "Recycling" means to refine, rerefine, reclaim, repro-
22 cess, or by other means make suitable for reuse a plastic that
23 through use, storage, or handling has become unsuitable for its
24 original use.

25 Sec. 8702. (1) The plastics recycling development fund con-
26 sortium is established within the department. The consortium

1 shall consist of the following members who shall be appointed by
2 the governor:

3 (a) A representative of the general public, appointed by the
4 director, who is knowledgeable in the area of plastics or recycl-
5 ing of plastics, or both.

6 (b) The director or his or her authorized representative.

7 (c) An individual representing the recycling industry who is
8 knowledgeable in matters pertaining to the recycling of
9 plastics.

10 (d) An individual who is employed by a university in this
11 state and is knowledgeable about the use of plastics in
12 packaging.

13 (e) An individual representing the plastics manufacturing
14 industry.

15 (f) An individual representing plastic resin producers.

16 (g) An individual representing the packaging industry.

17 (2) Official action of the consortium shall be by majority
18 vote of all of the consortium members.

19 (3) The consortium shall meet immediately upon formation and
20 then shall meet at least quarterly at an office of the depart-
21 ment, or at other places in the state as may be designated by the
22 consortium. At the initial meeting, and annually thereafter, the
23 consortium shall select a chairperson who shall serve for a term
24 of 1 year.

25 (4) The business that the consortium may perform shall be
26 conducted at a public meeting of the consortium held in
27 compliance with the open meetings act, Act No. 267 of the Public

1 Acts of 1976, being sections 15.261 to 15.275 of the Michigan
2 Compiled Laws. Public notice of the time, date, and place of the
3 meetings shall be given in the manner required by Act No. 267 of
4 the Public Acts of 1976.

5 Sec. 8703. The consortium shall do all of the following:

6 (a) Administer a grant and loan program pursuant to this
7 part to stimulate the growth of the plastics recycling industry.

8 (b) Provide advice and recommendations to the legislature,
9 the governor, and executive departments in order to promote the
10 development of the plastics recycling industry.

11 (c) Promote and provide for educational programs for the
12 general public and members of local government to increase aware-
13 ness of the importance of the recycling of plastics to this
14 state.

15 (d) Consult and utilize the services of any person as the
16 consortium considers necessary or helpful in implementing this
17 part.

18 (e) Perform other functions necessary to implement this part
19 as authorized by the director.

20 Sec. 8704. (1) The plastics recycling development fund is
21 created as a separate fund in the department of treasury to be
22 administered and expended by the consortium for the purpose of
23 making grants and loans pursuant to sections 8705 and 8706. The
24 amount of the fund shall not exceed \$5,000,000.00.

25 (2) The fund may receive revenue from the following
26 sources:

1 (a) Funds received by this state from the sale of bonds and
2 allocated to the fund as provided in the environmental protection
3 bond implementation act, Act No. 328 of the Public Acts of 1988,
4 being sections 299.671 to 299.685 of the Michigan Compiled Laws.

5 (b) Repayment of principal and interest and earnings gener-
6 ated under a loan granted pursuant to this part.

7 (c) Funds appropriated to the fund by the legislature.

8 (d) Funds from any other source as authorized by law.

9 (3) Appropriations made to the fund and interest and earn-
10 ings generated by the fund do not lapse at the end of the fiscal
11 year for which an appropriation was made, but remain in the fund
12 to be expended as provided in this part.

13 Sec. 8705. (1) The consortium shall establish a plastics
14 recycling development grant and loan program.

15 (2) The consortium shall publish requests for proposals for
16 grants or loans to be available from the fund for any of the fol-
17 lowing projects related to technological developments, products,
18 production procedures, or marketing techniques to encourage the
19 state's plastics recycling industry as determined appropriate by
20 the consortium:

21 (a) Market development projects.

22 (b) Resource base information development projects.

23 (c) Feasibility study projects.

24 (d) Research projects.

25 (e) Development projects.

26 (f) Research and development projects.

1 (3) The consortium shall annually publish information about
2 grants and loans available under this section in a manner
3 selected by the consortium as best calculated to give notice to
4 persons likely to be interested in the grants and loans.
5 Information regarding grants and loans available under this part
6 and application forms shall be distributed by the consortium upon
7 request.

8 (4) An application for a grant or loan under this section
9 shall be on a form provided by the consortium and shall contain
10 information required by the consortium.

11 (5) The consortium may award a grant or loan to a person who
12 has applied in response to a request for proposal published by
13 the consortium.

14 (6) The consortium shall require a person to contribute not
15 less than 25% of the total project cost as a condition of receiv-
16 ing a grant or loan under this section.

17 (7) The consortium in making grants and loans under this
18 section shall consider all of the following:

19 (a) The degree to which the project is responsive to a
20 request for a proposal published by the consortium pursuant to
21 subsection (2).

22 (b) The potential for the project, if funded, to assist the
23 plastics recycling industry in this state.

24 (c) The potential for the project, if funded, to create jobs
25 in the plastics recycling industry in this state.

26 (d) If the applicant's project proposes the development of a
27 new technology or product, the likelihood that the technology or

1 product would enhance the competitiveness of this state's
2 plastics recycling industry.

3 (e) If the applicant's project involves the development of a
4 new technology or product, whether the applicant provides a fea-
5 sibility study with results supportive of project initiation.

6 (f) The potential for the project to be applied or utilized
7 by persons in this state other than the applicant.

8 (g) If the applicant makes application for a grant, the
9 ability of the applicant to contribute matching funds of not less
10 than 25% of the project cost.

11 (h) If the applicant's project involves research, the like-
12 lihood that the applicant may qualify for further research grants
13 or loans or follow-up grants or loans from other sources.

14 (i) Other factors as considered appropriate by the
15 consortium.

16 (8) In determining the rate of interest to be assessed on
17 loans made under this part, the consortium shall select an inter-
18 est rate that is below the average annual effective prime lending
19 rate for commercial banks as reported by the federal reserve
20 system.

21 Sec. 8706. (1) An application for a grant or loan made
22 under this part shall be reviewed and prioritized by the consor-
23 tium each fiscal year.

24 (2) Not less than 60 days prior to the end of each fiscal
25 year, the consortium shall report the following information
26 regarding the grants or loans made under this part to the
27 governor and the legislature:

1 (a) The name and address of each person to whom a grant or
2 loan was issued during the reporting year.

3 (b) The nature of the project that received a grant or loan
4 during the reporting year.

5 (c) The amount of money received by each person who received
6 a grant or loan during the reporting year.

7 (d) The county in which the project is located.

8 (e) The number of new employment opportunities, if any, that
9 resulted from grants or loans made during the reporting year.

10 (f) The number of new employment opportunities, if any, that
11 are expected to result from grants or loans that are anticipated
12 in the next reporting year.

13 Sec. 8707. This part is repealed effective January 1,
14 1992.

15 PART 91 CLEAN MICHIGAN FUND

16 Sec. 9101. For purposes of this part, the words and phrases
17 defined in sections 9102 and 9103 have the meanings ascribed to
18 them in those sections.

19 Sec. 9102. (1) "Approved solid waste management plan" means
20 a solid waste management plan submitted and approved under
21 part 63.

22 (2) "Capital costs" means those allowable costs, as deter-
23 mined by the department, of constructing or equipping, or both,
24 of a solid waste transfer facility, a recycling project, or a
25 composting project.

1 (3) "Composting project" means a project in which yard
2 wastes, including leaves and grass clippings, are converted into
3 humus through natural biological processes.

4 (4) "Disposal area" means disposal area as defined in
5 part 63.

6 (5) "Fund" means the clean Michigan fund created in section
7 9104.

8 (6) "Municipality" means a county, city, village, township,
9 or an agency of a county, city, village, or township; an author-
10 ity or any other public body created by or pursuant to state law;
11 or this state or an agency or department of this state.

12 (7) "Nonprofit private entity" means a private entity that
13 carries out any lawful purpose or purposes not involving pecuni-
14 ary profit or gain for its directors, officers, shareholders, or
15 members.

16 Sec. 9103. (1) "Private entity" means an individual, trust,
17 firm, joint stock company, corporation, or association that is
18 not a local unit of government.

19 (2) "Recycling project" means a project in which materials
20 that otherwise would become solid waste are collected, separated,
21 or processed and returned for conversion into raw materials or
22 products.

23 (3) "Resource recovery" means the processing or collecting
24 of solid wastes so as to produce materials or energy that may be
25 used in manufacturing, agriculture, heat production, or other
26 productive processes or purposes designed to reuse materials or
27 products or to conserve natural resources.

1 (4) "Site separated material" means glass, metals, wood,
2 paper products, plastics, rubber, textiles, or any other material
3 approved by the department, that is separated from solid waste
4 for conversion into raw materials or new products.

5 (5) "Solid waste" means solid waste as defined in part 63.

6 (6) "Solid waste transfer facility" means a solid waste
7 transfer facility as defined in part 63.

8 (7) "Source separated material" means glass, metals, wood,
9 paper products, plastics, rubber, textiles, or any other material
10 approved by the department that is separated at the source of
11 generation for conversion into raw material or new products.

12 (8) "Waste-to-energy" means a process that specifically is
13 designed to recover energy through the combustion or volume
14 reduction of solid waste.

15 Sec. 9104. The clean Michigan fund is created in the state
16 treasury. The fund shall consist of appropriations from the gen-
17 eral fund or any other fund, as provided by law, and any gifts
18 and donations to the fund. The fund shall be expended only for
19 the programs described in this part, for the staffing and admin-
20 istrative costs to the department of administering those pro-
21 grams, and for any costs associated with the advisory panel
22 described in section 9120.

23 Sec. 9105. (1) The commission may make grants to counties
24 having a population less than 12,000 enabling such a county to
25 establish a revolving loan fund with money received from the
26 commission. The initial grant shall be used by the county to
27 establish a revolving loan fund that shall be allocated and

1 reallocated as provided in this section. Not more than 1% of a
2 grant made pursuant to this section may be utilized by a county
3 for the administration of the loan program.

4 (2) Grant money loaned by a county under this section shall
5 be loaned to a private entity or nonprofit private entity only
6 for purposes and programs that would be eligible to receive a
7 grant under this part and may not be used for any other purpose,
8 except administration costs.

9 (3) A county that receives a grant under this section shall
10 establish a county loan board to review applications for loans
11 submitted to the county and the board shall make recommendations
12 to the county board of commissioners. The county loan board
13 shall consist of a member to represent each of the following:

14 (a) The county.

15 (b) Nonprofit private entities and private entities engaged
16 in resource recovery alternatives.

17 (c) Conservation or environmental organizations.

18 (d) The department.

19 (e) A member of the general public.

20 (4) Upon receipt of the recommendations of the county loan
21 board, the county board of commissioners of a county that
22 receives a grant under this section shall determine when a loan
23 shall be made. The board of commissioners shall not make a loan
24 unless both of the following conditions are met:

25 (a) The loan applicant is seeking a loan for a purpose or
26 program that would be eligible to receive a grant under this
27 part.

1 (b) The amount of the proposed loan is not more than
2 \$300,000.00.

3 (5) The county shall provide the department with an annual
4 audit of the revolving loan fund using generally accepted
5 accounting procedures.

6 (6) A county may be liable to the commission for the full
7 amount of a grant made pursuant to this section if at any time
8 the county makes a loan in a manner or to an entity that is sub-
9 stantially out of compliance with this part.

10 (7) A grant to a county made under this section shall not
11 exceed \$300,000.00.

12 Sec. 9106. (1) The commission shall cause to be conducted a
13 series of waste stream assessments in representative areas of the
14 state. The assessments shall determine the characteristics of
15 the waste stream and document seasonal fluctuations in the volume
16 of waste.

17 (2) The commission shall select a site for a waste stream
18 assessment subject to the following prerequisites:

19 (a) The site is located in a county that has an approved
20 solid waste management plan.

21 (b) The approved solid waste management plan for the county
22 proposes some type of resource recovery.

23 (c) The site has not been the subject of an adequate waste
24 stream assessment within the 5 years before the assessment autho-
25 rized by this part is performed.

1 (3) The commission shall consider the following in
2 determining appropriate sites for inclusion in the waste stream
3 assessment:

4 (a) The extent to which the owners of the disposal areas in
5 the proposed study site will do the following:

6 (i) Provide an area on the site for scales and for composi-
7 tion studies.

8 (ii) Provide temporary shelter for work during inclement
9 weather.

10 (iii) Enlist the cooperation of solid waste haulers.

11 (b) The likelihood that a resource recovery project or
12 projects will be undertaken at the proposed site.

13 (c) The likelihood that the data resulting from the assess-
14 ment of the proposed site will be usable or useful in evaluating
15 the waste stream in other similar areas of the state.

16 (d) The extent to which selection of the site contributes to
17 the achievement of a balanced distribution of assessments
18 throughout the state.

19 (e) The availability of a scale at the proposed site.

20 (4) The commission shall not expend more than 5% of the
21 total amount in the fund in any state fiscal year on the assess-
22 ments described in this section. The commission shall not expend
23 more than \$50,000.00 for any single assessment conducted under
24 this section.

25 Sec. 9107. (1) The commission shall cause to be conducted a
26 series of recycling and composting feasibility studies. A study
27 shall establish a basis upon which a decision to commit financial

1 resources to a proposed recycling or composting project can be
2 made. The commission shall prescribe the elements to be included
3 within a study.

4 (2) The commission shall select a site for a recycling and
5 composting feasibility study subject to the following
6 prerequisites:

7 (a) The site is located in a county that has an approved
8 solid waste management plan.

9 (b) The recycling or composting project proposed by the
10 municipality is consistent with the approved solid waste manage-
11 ment plan.

12 (3) The commission shall consider the following factors in
13 selecting a site for a recycling and composting feasibility
14 study:

15 (a) The extent to which a municipality commits to proceeding
16 with the project if the study determines that the project is
17 feasible.

18 (b) The degree of demonstrated municipality, community
19 group, or volunteer interest in undertaking a recycling or com-
20 posting project.

21 (c) A demonstration that a recycling or composting project
22 undertaken on the basis of the study would provide a necessary
23 solid waste management alternative, given the status of existing
24 disposal areas serving the location.

25 (d) The extent to which selection of the site contributes to
26 the achievement of a balanced distribution of studies throughout
27 the state.

1 (e) The demonstrated capability of the municipality in which
2 the site is located to work with adjacent municipalities on
3 alternative resource recovery projects.

4 (4) The commission shall not expend more than 5% of the
5 total amount in the fund in any state fiscal year on the studies
6 described in this section. The commission shall not expend more
7 than \$30,000.00 for any single study conducted under this
8 section.

9 Sec. 9108. (1) The commission shall cause to be conducted a
10 series of waste-to-energy feasibility studies. A study shall
11 establish a basis upon which a decision to commit financial
12 resources to a proposed waste-to-energy project can be made. The
13 commission shall prescribe the elements to be included in the
14 study.

15 (2) The commission shall select a site for a waste-to-energy
16 feasibility study subject to the following prerequisites:

17 (a) The site is located in a county that has an approved
18 solid waste management plan.

19 (b) The waste-to-energy project proposed is consistent with
20 the approved solid waste management plan.

21 (3) The commission shall consider the following factors in
22 selecting a site for a waste-to-energy feasibility study:

23 (a) The extent to which the municipality proposing the
24 project has done the following:

25 (i) Held meetings to discuss a waste-to-energy project.

26 (ii) Sought funding for studies of a waste-to-energy
27 project.

1 (iii) Sought feasibility data on its own.

2 (b) The availability of letters of interest from potential
3 energy markets.

4 (c) Whether a recycling feasibility study for the area to be
5 served by the proposed waste-to-energy facility is available.

6 (d) Whether a waste-to-energy facility undertaken on the
7 basis of the study would provide a necessary solid waste manage-
8 ment alternative, given the status of existing disposal areas
9 serving the location.

10 (e) The extent to which selection of the site contributes to
11 the achievement of a balanced distribution of studies throughout
12 the state.

13 (f) The demonstrated efforts of the municipality in which
14 the site is located in working towards alternative resource
15 recovery solutions to solid waste management problems, such as
16 implementing recycling or composting programs in the area to be
17 served.

18 (g) The demonstrated capability of the municipality in which
19 the site is located to work with adjacent municipalities on
20 alternative resource recovery projects.

21 (4) The commission shall not expend more than 15% of the
22 total amount in the fund in any state fiscal year for the studies
23 described in this section. The commission shall not expend more
24 than \$400,000.00 for any single study conducted under this
25 section.

1 Sec. 9109. (1) The commission shall establish an
2 educational program with respect to resource recovery to
3 accomplish the following:

4 (a) To promote on a statewide basis the purchase of recycled
5 products and materials.

6 (b) To develop promotional materials for distribution by
7 municipalities in support of their resource recovery
8 initiatives.

9 (2) The department shall establish a resource recovery edu-
10 cation grant program. The program shall provide funding for the
11 direct promotion of local resource recovery initiatives by munic-
12 ipalities, nonprofit private entities, and private entities. The
13 commission shall make the grants described in this subsection.

14 (3) The commission shall not make a resource recovery educa-
15 tion grant unless both of the following conditions are met:

16 (a) The proposed education project is conducted in a county
17 that has an approved solid waste management plan.

18 (b) A local resource recovery project is planned or under
19 way and the proposed education project directly promotes the use
20 of that project.

21 (4) The commission shall consider the following factors in
22 selecting recipients of resource recovery education grants:

23 (a) Whether the education program has measurable
24 objectives.

25 (b) The extent of background research completed.

26 (c) The type and extent of follow-up or evaluation, or both,
27 to be conducted.

1 (d) The level of commitment by local officials.

2 (e) The extent to which the recipient commits its own finan-
3 cial resources to the education project.

4 (f) The extent to which selection of the project contributes
5 to the achievement of a balanced distribution of grants through-
6 out the state.

7 (5) The commission shall not expend more than 25% of the
8 total amount in the trust fund in any state fiscal year on the
9 educational program and the education grant program described in
10 this section. The commission shall not expend more than
11 \$50,000.00 for any single education grant made under this
12 section.

13 Sec. 9110. (1) The department shall establish a solid waste
14 transfer station grant program. The program shall provide fund-
15 ing to municipalities, nonprofit private entities, and private
16 entities for the cost of transfer station construction. The com-
17 mission shall make the grants described in this section.

18 (2) The commission shall not make a solid waste transfer
19 station grant unless both of the following conditions are met:

20 (a) The proposed transfer station is located in a county
21 that has an approved solid waste management plan.

22 (b) The proposed solid waste transfer station is consistent
23 with the approved solid waste management plans of all of the
24 affected counties.

25 (3) The commission shall consider the following factors in
26 selecting recipients for solid waste transfer station grants:

1 (a) The potential for providing to the municipality resource
2 recovery alternatives otherwise not available to the municipality
3 without the proposed transfer station.

4 (b) The willingness of the municipality to form or partici-
5 pate in a joint solid waste management system with adjacent
6 municipalities.

7 (c) The applicant demonstrates that the proposed transfer
8 station replaces a sanitary landfill or open dump closed accord-
9 ing to the standards contained in part 63.

10 (4) The commission shall not dispense a solid waste transfer
11 station grant unless all permits that are required by state law
12 and that are specifically applicable to the nature of the pro-
13 posed project have been obtained.

14 (5) The commission shall not expend more than 25% of the
15 total amount in the fund in any state fiscal year on the solid
16 waste transfer station grant program. The commission shall not
17 expend more than \$300,000.00 for any single transfer station
18 grant made under this section.

19 Sec. 9111. (1) The department shall establish a recycling
20 and composting capital grant program. The program shall provide
21 funding for the capital costs of recycling and composting pro-
22 grams undertaken by municipalities, nonprofit private entities,
23 or private entities. The commission shall make the grants
24 described in this section.

25 (2) The commission shall not make a recycling or composting
26 capital grant unless all of the following conditions are met:

1 (a) The proposed recycling or composting project is located
2 in a county that has an approved solid waste management plan.

3 (b) The proposed recycling or composting project is consis-
4 tent with the approved solid waste management plan.

5 (c) The applicant provides either a feasibility study with
6 positive results supportive of project initiation or sufficient
7 data justifying project expansion.

8 (d) The equipment obtained with the grant is used for source
9 separated materials or site separated materials, or both.

10 (3) The commission shall consider the following factors in
11 selecting recipients for recycling and composting capital
12 grants:

13 (a) The likelihood of project success as indicated by the
14 feasibility study results.

15 (b) The availability of an appropriate site.

16 (c) A demonstration by the applicant that the materials to
17 be collected or processed, or both, are not being recovered pres-
18 ently and would not be recovered otherwise, but for the proposed
19 recycling or composting project.

20 (d) A demonstration by the applicant that the materials to
21 be collected or processed, or both, will be absorbed in an exist-
22 ing market without displacing existing resource recovery opera-
23 tions, or that the materials, by being collected or processed, or
24 both, will create a new market.

25 (e) The business and accounting plans for the proposed recy-
26 cling or composting project.

1 (f) The need for a new or expanded recycling or composting
2 program in the area to be served, relative to the needs of other
3 areas.

4 (g) The extent to which selection of the recycling or com-
5 posting program contributes to the achievement of a balanced dis-
6 tribution of grants throughout the state.

7 (h) A demonstration by the applicant that land, buildings,
8 personnel, support services, or funds have been committed to the
9 recycling or composting project.

10 (i) The portion of the waste stream that is projected to be
11 diverted from landfills, compared to the projected costs of the
12 recycling or composting project.

13 (j) The immediacy of the reduction in waste resulting from
14 the recycling or composting program.

15 (k) The potential of the recycling or composting project to
16 be replicated in similar areas of the state.

17 (l) The availability of capacity at existing licensed land-
18 fills that serve the area to be served by the proposed recycling
19 or composting program.

20 (m) The demonstrated municipality, community group, or vol-
21 unteer interest in undertaking a recycling or composting
22 project.

23 (n) The demonstrated capability of the applicant in working
24 with adjacent municipalities on alternative resource recovery
25 projects, such as development of a regional resource recovery
26 organization, jointly sponsored resource recovery initiatives, or
27 regional materials marketing strategies.

1 (4) The commission shall not dispense a recycling or
2 composting capital grant unless all the permits that are required
3 by this part and as otherwise required by state law and that are
4 specifically applicable to the nature of the proposed project
5 have been obtained.

6 (5) The commission shall not expend more than 20% of the
7 total amount in the fund in any state fiscal year on the recycl-
8 ing and composting capital grant program. The commission shall
9 not expend more than \$500,000.00 for any single recycling or com-
10 posting capital grant made under this section.

11 Sec. 9112. (1) The department shall establish a
12 waste-to-energy capital grant program. The program shall provide
13 funding for the capital costs of waste-to-energy programs under-
14 taken by municipalities, nonprofit private entities, or private
15 entities. The commission shall make the grants described in this
16 section.

17 (2) The commission shall not make a waste-to-energy capital
18 grant unless all of the following conditions are met:

19 (a) The proposed waste-to-energy project is located in a
20 county that has an approved solid waste management plan.

21 (b) The proposed waste-to-energy project is consistent with
22 the approved solid waste management plan.

23 (c) The applicant provides either a feasibility study with
24 positive results supportive of project initiation or sufficient
25 data justifying project expansion.

26 (3) The commission shall consider the following factors in
27 selecting recipients for waste-to-energy capital grants:

1 (a) The likelihood of project success as indicated by the
2 feasibility study results.

3 (b) The availability of an appropriate site.

4 (c) A demonstration by the applicant that the materials to
5 be collected or processed, or both, are not being recovered
6 presently.

7 (d) The business and accounting plans for the proposed
8 waste-to-energy project.

9 (e) The need for a new or expanded waste-to-energy program
10 in the area to be served, relative to the needs of other areas.

11 (f) The extent to which selection of the waste-to-energy
12 program contributes to the achievement of a balanced distribution
13 of grants throughout the state.

14 (g) A demonstration by the applicant that land, buildings,
15 personnel, support services, or funds have been committed to the
16 waste-to-energy project.

17 (h) The portion of the waste stream that is projected to be
18 diverted from landfills, compared to the projected costs of the
19 waste-to-energy project.

20 (i) The potential of the waste-to-energy project to be rep-
21 licated in similar areas of the state.

22 (4) The commission shall not dispense a waste-to-energy cap-
23 ital grant unless all the permits that are required by this part
24 and as otherwise required by state law and that are specifically
25 applicable to the nature of the proposed project have been
26 obtained.

1 (5) The commission shall not expend more than 30% of the
2 total amount in the fund in any state fiscal year on the
3 waste-to-energy capital grant program. The commission shall not
4 expend more than \$2,000,000.00 for any single waste-to-energy
5 grant made under this section.

6 Sec. 9113. (1) The department shall establish a recycling
7 operational grant program. The program shall provide temporary
8 operating subsidies to assist municipalities, nonprofit private
9 entities, and private entities in recapturing the difference
10 between the cost of collection, processing, and transportation
11 and the revenues generated from the sale of the recovered
12 materials. The commission shall make the grants described in
13 this section.

14 (2) The commission shall not make a recycling operational
15 grant unless all of the following conditions are met:

16 (a) The proposed recycling project is located in a county
17 with an approved solid waste management plan.

18 (b) The proposed recycling project is consistent with the
19 approved solid waste management plan.

20 (c) A positive feasibility study of the proposed recycling
21 project, or sufficient data justifying project expansion, is
22 available.

23 (d) The applicant agrees to match the grant on a dollar for
24 dollar basis.

25 (e) The applicant agrees to continue support for the recycl-
26 ing project if the project is within 10% of previous disposal
27 costs.

1 (f) The applicant agrees to provide the department with an
2 annual operation report.

3 (g) The need for an operating subsidy is demonstrated.

4 (h) The grant is used for a project handling source sepa-
5 rated material or site separated material, or both.

6 (3) The commission shall consider the following factors in
7 determining whether to make a recycling operational grant:

8 (a) The portion of the waste stream projected to be diverted
9 from a landfill, compared to projected costs.

10 (b) A demonstration by the applicant that land, buildings,
11 personnel, support services, or funds have been committed to the
12 recycling project.

13 (c) The applicant's willingness to show others the program.

14 (d) The potential of the recycling project to be replicated
15 in similar areas of the state.

16 (e) The extent to which selection of the project contributes
17 to the achievement of a balanced distribution of grants through-
18 out the state.

19 (f) The demonstrated municipality, community group, or vol-
20 unteer interest in undertaking a recycling project.

21 (g) The demonstrated capability of the applicant in working
22 with adjacent municipalities on alternative resource recovery
23 projects, such as development of a regional resource recovery
24 organization, jointly sponsored resource recovery initiatives, or
25 regional materials marketing strategies.

1 (h) The availability of capacity at existing licensed
2 landfills that serve the area to be served by the proposed
3 recycling project.

4 (i) The existence of a plan for transferring financial
5 responsibility for the program to another funding source.

6 (j) The existence of sources of capital funding for the
7 project.

8 (4) The commission shall not dispense a recycling oper-
9 ational grant unless all the permits that are required by this
10 part and as otherwise required by state law and that are specifi-
11 cally applicable to the nature of the proposed project have been
12 obtained.

13 (5) The commission shall not expend more than 5% of the
14 total amount in the fund in any state fiscal year for the recycl-
15 ing operational grant program. The commission shall not expend
16 more than \$150,000.00 for any single recycling operational grant
17 made under this section.

18 Sec. 9114. (1) The department shall establish a composting
19 operational grant program. The program shall provide temporary
20 operating subsidies to assist municipalities, nonprofit entities,
21 and private entities in undertaking composting projects. The
22 commission shall make the grants described in this section.

23 (2) The commission shall not make a composting operational
24 grant unless all of the following conditions are met:

25 (a) The proposed composting project is located in a county
26 with an approved solid waste management plan.

1 (b) The proposed composting project is consistent with the
2 approved solid waste management plan.

3 (c) A positive feasibility study of the proposed composting
4 project, or sufficient data justifying project expansion, is
5 available.

6 (d) The applicant agrees to match the grant on a dollar for
7 dollar basis.

8 (e) The applicant agrees to provide the department with an
9 annual operation report.

10 (3) The commission shall consider the following factors in
11 determining whether to make a composting operational grant:

12 (a) The portion of the waste stream projected to be diverted
13 from a landfill, compared to projected costs.

14 (b) A demonstration by the applicant that land, buildings,
15 personnel, support services, or funds have been committed to the
16 composting project.

17 (c) The applicant's willingness to show others the program.

18 (d) The potential of the composting project to be replicated
19 in similar areas of the state.

20 (e) The extent to which selection of the project contributes
21 to the achievement of a balanced distribution of grants through-
22 out the state.

23 (f) The demonstrated municipality, community group, or vol-
24 unteer interest in undertaking a composting project.

25 (g) The demonstrated capability in working with adjacent
26 municipalities on alternative resource recovery projects, such as
27 development of a regional resource recovery organization, jointly

1 sponsored resource recovery initiatives, or regional materials
2 marketing strategies.

3 (h) The availability of capacity at existing licensed land-
4 fills that serve the area to be served by the proposed composting
5 project.

6 (i) A plan for transferring financial responsibility for the
7 program to another funding source has been developed.

8 (j) The sources of capital funding for the project.

9 (4) The commission shall not dispense a composting oper-
10 ational grant unless all the permits that are required by this
11 part and as otherwise required by state law and that are specifi-
12 cally applicable to the nature of the proposed project have been
13 obtained.

14 (5) The commission shall not expend more than 5% of the
15 total amount in the fund in any state fiscal year for the com-
16 posting operational grant program. The commission shall not
17 expend more than \$150,000.00 for any single composting oper-
18 ational grant made under this section.

19 Sec. 9115. (1) The department shall establish a household
20 hazardous waste disposal grant program. The program shall assist
21 municipalities in projects that educate citizens as to methods of
22 household hazardous waste reduction and disposal option, promote
23 the safe handling of household hazardous waste, or dispose of
24 household hazardous waste at a state or federally permitted or
25 licensed hazardous waste treatment, storage, or disposal
26 facility. The commission shall make the grants described in this
27 section.

1 (2) The commission shall not make a household hazardous
2 waste disposal grant unless all of the following conditions are
3 met:

4 (a) The project is not funded under a federal program.

5 (b) The municipality commits to contributing 20% of the
6 total project cost in cash or in-kind services, or both.

7 (c) The project is completed within 1 year after receipt of
8 the grant.

9 (d) The project is consistent with this part and other state
10 law and policy.

11 (3) The commission shall not dispense a household hazardous
12 waste disposal grant unless all the permits that are required by
13 this part and otherwise required by state law and that are spe-
14 cifically applicable to the nature of the proposed project have
15 been obtained.

16 (4) The commission shall not expend more than 2% of the
17 total amount in the fund in any state fiscal year for the house-
18 hold hazardous waste disposal grant program. The commission
19 shall not expend more than \$15,000.00 for any single household
20 hazardous waste disposal grant made under this section.

21 Sec. 9116. (1) The commission shall cause to be conducted a
22 statewide market development research study to assess the current
23 markets and the potential for and the means for expansion of
24 markets for recycled materials in this state. The commission
25 shall not expend more than 2.5% of the total amount in the fund
26 in any state fiscal year for the market development research
27 study. In addition, the commission shall establish a market

1 development plan based on the market development research study.
2 The plan shall identify the barriers in attracting or expanding
3 industries that use recycled materials and determine the appro-
4 priate methods for eliminating those barriers. The department of
5 commerce shall serve as project coordinator for the market devel-
6 opment study funded and administered by the commission pursuant
7 to this section.

8 (2) The department shall establish a market development
9 grant program. The program shall encourage expansion of the use
10 of recycled materials and the development of innovative technolo-
11 gies to use recycled materials. The commission shall make a
12 grant under the program described in this section.

13 (3) The commission shall select development projects subject
14 to the following prerequisites:

15 (a) The project is beyond the research stage and a demon-
16 stration has indicated that it is technically feasible.

17 (b) The recipient of the grant is a municipality, nonprofit
18 private entity, or a private entity in this state.

19 (c) The project shall be performed in this state.

20 (4) The department shall consider the following factors in
21 selecting recipients of market development grants:

22 (a) The contribution that would be made by the project
23 toward the goal of increasing the use of recycled materials.

24 (b) The market's need for the development of the technology
25 or equipment.

26 (c) The potential impact of the technology or equipment on
27 the cost effectiveness of using recycled materials.

1 (d) The potential for development of new resource recovery
2 markets and for the generation of positive economic impacts.

3 (e) The potential of the project for commercial
4 application.

5 (f) The stage of the development of the technology or equip-
6 ment proposed to be used in the project.

7 (g) The environmental, economic, and social benefits to the
8 state of the development of the technology or equipment.

9 (h) The future sources of capital funding for the project.

10 (i) The extent to which the applicant has committed land,
11 buildings, personnel, support services, or funds to the project.

12 (j) The potential of the project for developing multiple
13 markets.

14 (5) The commission shall not dispense a market development
15 grant unless all the permits that are required by this part and
16 as otherwise required by state law and that are specifically
17 applicable to the nature of the proposed project have been
18 obtained.

19 (6) The commission shall not expend more than 25% of the
20 total amount in the fund in any state fiscal year for the market
21 development grant program. The commission shall not expend more
22 than \$500,000.00 for any single grant made under this program.

23 Sec. 9117. (1) The department shall establish a program to
24 perform hydrogeological monitoring studies on open and closed
25 sanitary landfills and open dumps owned by municipalities. The
26 program shall determine the extent of groundwater contamination
27 associated with the sanitary landfills and open dumps and the

1 need for remedial actions on those sites. The commission shall
2 determine which landfills and dumps owned by municipalities are
3 to be monitored. In determining the order in which the landfills
4 and dumps owned by municipalities are to be monitored, the com-
5 mission shall consider the potential threat of human exposure to
6 environmental contamination originating from the sanitary land-
7 fill or open dump and the likelihood that hazardous waste was
8 accepted at the landfill or dump.

9 (2) The commission shall not expend more than 10% of the
10 total amount in the fund in any state fiscal year for the program
11 to perform hydrogeological monitoring studies. The commission
12 shall not expend more than \$50,000.00 for any single hydrogeolog-
13 ical monitoring study performed under this section.

14 Sec. 9118. (1) The department shall establish a sanitary
15 landfill and open dump closure or reclosure matching grant
16 program. The program shall provide up to 75% of the funding for
17 the closure or reclosure of sanitary landfills and open dumps
18 owned or operated by municipalities. In addition, the program
19 shall provide up to 75% reimbursement for the closure of munici-
20 pally owned sanitary landfills and open dumps or the reclosure of
21 municipally owned sanitary landfills and open dumps that were
22 closed after January 11, 1979, the effective date of former Act
23 No. 641 of the Public Acts of 1978 according to the standards
24 prescribed by that former act, which is currently part 63, but
25 before December 4, 1986. The commission shall make the grants
26 described in this section.

1 (2) The commission shall not make a closure or reclosure
2 grant unless all of the following requirements are met:

3 (a) The sanitary landfill or open dump proposed for closure
4 or reclosure is located in a county that has an approved solid
5 waste management plan.

6 (b) The grant is for the closure of an operating sanitary
7 landfill or open dump that is not operated according to the stan-
8 dards contained in part 63 and the rules promulgated under that
9 part or the grant is for the reclosure of a closed sanitary land-
10 fill or dump that was not closed according to the standards con-
11 tained in part 63 and the rules promulgated under that part.

12 (c) If the grant is reimbursement for the closure or reclo-
13 sure of a landfill or dump, the closure or reclosure was made
14 according to the standards of part 63, and the rules promulgated
15 under that part.

16 (d) The grant shall be used only for a closure or reclosure
17 that is a complete closure of an entire landfill or dump.

18 (e) The closure or reclosure will be accomplished completely
19 within 1 year after receipt of the grant.

20 (3) The commission shall consider the following factors in
21 selecting recipients of closure or reclosure grants:

22 (a) The degree of effort demonstrated by the municipality in
23 working toward alternative solutions to solid waste management
24 problems.

25 (b) The degree of the potential threat of groundwater
26 contamination.

1 (c) The likelihood that hazardous waste was accepted.

2 (d) The municipality's willingness to work with adjacent
3 municipalities on alternative solutions.

4 (e) The municipality's commitment to refrain from operating
5 unlicensed disposal areas in the future.

6 (4) The commission shall not expend more than 25% of the
7 total amount in the fund in any state fiscal year for the sani-
8 tary landfill and open dump closure or reclosure matching grant
9 program. The commission shall not expend more than \$600,000.00
10 for any single grant made under this section.

11 Sec. 9119. Any project of the type for which a grant may be
12 available under section 9111, that produces site separated mate-
13 rials, and for which the licenses or permits required by this
14 part and as otherwise required by law have been obtained, is eli-
15 gible to receive a grant under this part.

16 Sec. 9120. (1) An 11-member advisory panel shall be
17 appointed to review the applications submitted to the commission
18 for inclusion in the studies and assessments and for receipt of
19 the grants to be made under this part and shall make recommenda-
20 tions to the commission. The advisory panel shall include 1
21 member of the commission and 1 member of the general public,
22 appointed by the governor. The member of the commission shall be
23 the chairperson of the panel. In addition, the governor, the
24 majority leader of the senate, and the speaker of the house of
25 representatives each shall appoint a member to represent each of
26 the following:

1 (a) Municipalities.

2 (b) Nonprofit private entities and private entities engaged
3 in resource recovery alternatives.

4 (c) Conservation or environmental organizations.

5 (2) A member shall serve for a term of 2 years. However, of
6 the members first appointed, the members appointed by the gover-
7 nor shall be appointed for terms of 3 years.

8 (3) Members of the advisory panel and relatives and business
9 associates of the members of the panel are not eligible for any
10 grant under this part.

11 Sec. 9121. (1) The commission shall administer the studies,
12 assessments, and programs described in this part according to the
13 following:

14 (a) Within 60 days after enactment of the general appropria-
15 tions bill for the department for a state fiscal year, the com-
16 mission shall issue a request for applications for inclusion in
17 any study or assessment to be conducted that year and for receipt
18 of any grant available during that year.

19 (b) The commission shall not accept any applications after
20 60 days from the issuance of a request for applications.

21 (c) Within 90 days after the application period closes, the
22 advisory panel established in section 20 shall complete its
23 review of the applications and submit its recommendations to the
24 commission.

25 (d) Within 45 days after the advisory panel recommendations
26 are made, the commission shall complete its review of the
27 application and recommendations and make its determinations.

1 (2) An application for inclusion in any study or assessment
2 described in this part or for any grant available under this part
3 shall be made on a form prescribed by the department. The
4 department may require the applicant to provide any information
5 reasonably necessary to allow the commission to make the determi-
6 nations required by this part.

7 (3) Each recipient of a grant and each participant in a
8 study or assessment under this part shall complete and return a
9 project summary on a form developed by the department by a date
10 specified by the advisory panel. A recipient or participant who
11 fails to submit a project summary as required by this section is
12 not eligible to be a recipient or participant under this part for
13 5 years after the year for which the failure occurs.

14 (4) The project summary form developed by the department
15 shall not exceed 1 page and shall obtain the following
16 information:

17 (a) The name, address, and telephone number of the recipient
18 or participant.

19 (b) The name of the project.

20 (c) The amount of money received.

21 (d) The county in which the project is located.

22 (e) A brief summary of the activities and accomplishments of
23 the project.

24 (5) A completed project summary is available to the public
25 under the freedom of information act, Act No. 442 of the Public
26 Acts of 1976, being sections 15.231 to 15.246 of the Michigan
27 Compiled Laws.

1 Sec. 9122. (1) Not later than March 31 of each year, the
2 commission shall report the following information regarding the
3 projects financed under this act for that fiscal year to the gov-
4 ernor, the standing committees of the senate and the house of
5 representatives that address issues pertaining to natural
6 resources and environmental protection, and the subcommittees of
7 the house of representatives and the senate on appropriations for
8 the department:

9 (a) The name, address, and telephone number of the recipient
10 or participant.

11 (b) The nature of the project.

12 (c) The amount of money received.

13 (d) The county in which the project is located.

14 (2) Not later than September 30 of each year, the commission
15 shall submit to the governor and the legislature a report on the
16 projects financed under this act during the previous fiscal
17 year. The report shall consist of the project summaries
18 described in section 9121, along with an introduction and conclu-
19 sion prepared by the advisory panel.

20 Sec. 9123. By December 4, 1989, the commission shall ana-
21 lyze the studies and assessments funded by this part and report
22 to the legislature as to whether and to what extent the studies
23 and assessments support the feasibility of constructing recycl-
24 ing, composting, and waste-to-energy facilities.

ARTICLE 5

PART 201

1 Sec. 20101. The following acts and parts of acts are
 2 repealed:

5	<u>PUBLIC ACT NUMBER</u>	<u>YEAR OF ACT</u>	<u>MICHIGAN COMPILED LAWS SECTIONS</u>
6	320	1927	123.241 to 123.253
7	171	1976	286.551 to 286.581
8	17	1921	299.1 to 299.10
9	60	1976	299.351 to 299.360
10	249	1986	299.371 to 299.393
11	641	1978	299.401 to 299.437
12	411	1988	299.461 to 299.464
13	415	1988	299.471 to 299.478
14	414	1988	299.481 to 299.484
15	64	1979	299.501 to 299.551
16	133	1990	299.561 to 299.572
17	307	1982	299.601 to 299.618
18	423	1984	299.701 to 299.712
19	245	1987	299.731 to 299.740
20	247	1987	299.751 to 299.765
21	518	1988	299.801 to 299.828
22	478	1988	299.831 to 299.850
23	20	1990	299.861 to 299.869
24	350	1865	307.22 to 307.32
25	411	1980	319.311 to 319.316
26	245	1929	323.1 to 323.12a

1	211	1956	323.151 to 323.162
2	226	1971	323.231 to 323.236
3	136	1969	323.271 to 323.280
4	271	1974	323.291 to 323.293
5	181	1986	325.311 to 325.332
6	167	1970	323.331 to 323.342
7	317	1988	323.451 to 323.470
8	98	1913	325.201 to 325.214
9	399	1976	325.1001 to 325.1023
10	348	1965	336.11 to 336.36
11	145	1988	445.581 to 445.584
12	127	1970	691.1201 to 691.1207
13	106	1963	752.901 to 752.906