

Act No. 435
Public Acts of 1994
Approved by the Governor
January 5, 1995
Filed with the Secretary of State
January 6, 1995

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1994**

Introduced by Senator Ehlers

ENROLLED SENATE BILL No. 21

AN ACT to amend sections 13702 13708 13709 13710 13724 13725 13727 13729 13731 and 13740 of Act No 368 of the Public Acts of 1978 entitled as amended An act to protect and promote the public health to codify revise consolidate classify and add to the laws relating to public health to provide for the prevention and control of diseases and disabilities to provide for the classification administration regulation financing and maintenance of personal environmental and other health services and activities to create or continue and prescribe the powers and duties of departments boards commissions councils committees task forces and other agencies to prescribe the powers and duties of governmental entities and officials to regulate occupations facilities and agencies affecting the public health to regulate health maintenance organizations and certain third party administrators and insurers to provide for the imposition of a regulatory fee to promote the efficient and economical delivery of health care services to provide for the appropriate utilization of health care facilities and services and to provide for the closure of hospitals or consolidation of hospitals or services to provide for the collection and use of data and information to provide for the transfer of property to provide certain immunity from liability to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances to provide for penalties and remedies to provide for sanctions for violations of this act and local ordinances to repeal certain acts and parts of acts to repeal certain parts of this act and to repeal certain parts of this act on specific dates as added by Act No 203 of the Public Acts of 1987 being sections 333 13702 333 13708 333 13709 333 13710 333 13724 333 13725 333 13727 333 13729 333 13731 and 333 13740 of the Michigan Compiled Laws

The People of the State of Michigan enact

Section 1 Sections 13702 13708 13709 13710 13724 13725 13727 13729 13731 and 13740 of Act No 368 of the Public Acts of 1978 as added by Act No 203 of the Public Acts of 1987 being sections 333 13702 333 13708 333 13709 333 13710 333 13724 333 13725 333 13727 333 13729 333 13731 and 333 13740 of the Michigan Compiled Laws are amended to read as follows

Sec 13702 (1) Above ground vault means an engineered structure with a floor walls and a roof constructed at least partially above grade that is designed in a manner that is compatible with the requirements of this part and the rules promulgated under this part

(2) Above or below ground canisters are individual engineered modular containers that contain 1 or more waste packages that are approved by the department in compliance with applicable federal law and designed in a manner that meets all of the requirements of this part and the rules promulgated under this part

(3) Authority means the low level radioactive waste authority created in the low level radioactive waste authority act Act No 204 of the Public Acts of 1987 being sections 333 26201 to 333 26226 of the Michigan Compiled Laws

(4) Below ground vault means an engineered structure with a floor walls and a roof constructed entirely below grade that is designed in a manner that is compatible with the requirements of this part and the rules promulgated under this part

(5) Candidate site means a site designated by the authority as a possible host site

(6) Carrier means a person authorized pursuant to this part who is engaged in the transportation of waste by air rail highway or water

(7) Collector means a person authorized pursuant to this part who receives prepackaged waste from a generator and who does not treat or repackage that waste

(8) Compact means a contractual cooperative agreement among 2 or more states to provide for the disposal of low level radioactive waste that is reflected in the passage of statutes by the participating states

(9) Disposal means the isolation of waste from the biosphere by emplacement in the disposal site or as otherwise authorized in section 13709(3)

(10) Disposal site means a geographic location in this state upon which the disposal unit and any other structures and appurtenances are located the property upon which any monitoring equipment is located and the isolation distance from the disposal unit to adjacent property lines

(11) Disposal unit means the portion of the disposal site into which waste is placed for disposal

(12) Host site means the candidate site that is designated by the commissioner as the location for the disposal site in this state

Sec 13708 The director or the director's designee with the assistance of other state departments and agencies shall do all of the following

(a) Implement a regulatory inspection and enforcement program to carry out the provisions of this part

(b) Issue a construction and operating license to the authority upon the submittal by the authority of an application for a license for the construction and operation of the disposal unit on the disposal site that is in compliance with the requirements of this part and with rules promulgated under this part

(c) Issue permits to generators carriers collectors and processors if all the requirements of this part and rules promulgated under this part are met

(d) Assure that the authority fulfills its responsibilities under this act and under the low level radioactive waste authority act

(e) Promulgate rules and take any other action considered necessary by the department as authorized under the administrative procedures act of 1969 Act No 306 of the Public Acts of 1969 being sections 24 201 to 24 328 of the Michigan Compiled Laws In fulfilling the requirement to promulgate rules the director shall promulgate rules necessary to implement the provisions of this part that pertain to the issuance of permits to generators transporters collectors and processors including rules pertaining to the possession of waste by a generator transporter collector or processor that is incidental to the regulated activity of the permit holder

(f) Contract as necessary for research and services to assist in the implementation of the department's powers and duties under this part

(g) Insure the permanent maintenance of records that are sufficient to assure a complete accounting of all waste that is generated transported processed collected and disposed of in this state and which includes the maintenance of records pertaining to the operation of the disposal site the site site closure and stabilization and institutional control

(h) Review the monthly report submitted by the authority to the department as required in section 18 of the low level radioactive waste authority act

(i) Take responsive action regarding any discrepancy or other matter considered necessary by the department after reviewing the monthly report described in subdivision (h)

(j) Biannually audit all of the records pertaining to manifests that are maintained by the authority

(k) Develop and implement policies and programs to insure adequate and informed public participation in matters pertaining to the regulation of the disposal site

(l) Review and comment on the site selection process developed by the authority pursuant to the low level radioactive waste authority act

(m) Review and approve or disapprove the weekly construction inspection submitted by the authority during the construction of the disposal site

(n) Review for completeness only the contracts entered into by the authority pursuant to the low level radioactive waste authority act

(o) Review the authority's recommendation regarding sanctions against a generator, carrier, collector, or processor who the authority suspects has violated this part's rules promulgated under this part or a permit issued under this part and respond by taking appropriate regulatory action.

(p) Assure that the authority charges just and reasonable fees and surcharges for the disposal of waste and obtains sufficient funds to cover expenses incurred under this part and as required in the low level radioactive waste authority act.

(q) Seek appropriations from the general fund and from the low level radioactive waste management fund from the legislature in amounts that are sufficient to fulfill the department's responsibilities under this part.

(r) Approve or disapprove a waiver by the authority of 1 or more of the criteria for the selection of 3 candidate sites provided for in section 11(4) of the low level radioactive waste authority act. If the director approves the waiver, the approval shall indicate why the director concludes that the waiver will not compromise the public health, safety, or welfare or the environment and that a candidate site for which a waiver is sought is an appropriate candidate site despite the site's inability to meet 1 or more of the criteria in section 11(3) of the low level radioactive waste authority act. Prior to approving a waiver under this subdivision, the director shall forward the proposed approval and supporting documentation to the department of natural resources for review and written comments.

Sec 13709 (1) A person shall not possess, generate, collect, process, package, store, transport, or dispose of waste in this state without complying with the requirements of this part.

(2) Except as otherwise provided in subsection (3), if this state has not obtained full agreement state status with the federal government, a person shall not dispose of waste in this state except in the disposal site licensed by the United States nuclear regulatory commission or its successor agency and by the director through the issuance of a construction and operating license under this part. Except as otherwise provided in subsection (3), if this state has full agreement state status, a person shall not dispose of waste in this state except at the disposal site licensed by the director through the issuance of a construction and operating license under this part.

(3) Prior to the issuance of a construction and operating license under this part, if a person obtains a waiver pursuant to 10 C.F.R. 20.302, the requirement that waste be disposed of only in the disposal site shall be waived by the director upon receipt of notice and evidence of such a waiver. Following the issuance of a construction and operating license under this part, the director with the written concurrence of the authority may grant or deny an application for a waiver of the requirement that waste be disposed of only in the disposal site if either of the following occurs:

(a) If this state has obtained full agreement state status with the federal government, the department approves the disposal of the waste in a location other than the disposal site and concludes that the waiver will not harm the public health, safety, or welfare or the environment and will not substantially impact on the volume of waste available for disposal in the disposal site or the financial solvency of the disposal site.

(b) If this state has not obtained a full agreement state status with the federal government, the department concludes that any waiver granted by the nuclear regulatory commission will not harm the public health, safety, or welfare or the environment and will not substantially impact on the volume of waste available for disposal in the disposal site or the financial solvency of the disposal site.

(4) The department shall assure that waste that is not generated in this state or in a state with which this state may elect to enter a compact shall not be accepted for disposal at the disposal site. In addition, if this state is a member of a compact, the department shall assure that this state does not accept waste for disposal from any member of the compact that does either of the following:

(a) Is delinquent in paying dues or fees payable under the compact.

(b) Fails to establish or maintain a permitting and regulatory system, including penalties and remedies, that equals or exceeds the laws and rules of this state as they apply to generators, carriers, processors, and collectors.

(5) If this state is not a member of a compact, the department shall assure that the disposal site accepts only waste generated in this state.

Sec 13710 (1) The director, following consultation with the department of natural resources, shall establish minimum criteria for the design, construction, and operation of the disposal site. The minimum criteria shall reflect and shall be updated to include state of the art technology in regard to disposal site design, construction, operation, and waste disposal technology. The criteria shall be developed and prepared in the form of specifications to be included in the construction and operating license issued to the authority pursuant to sections 13712 to 13714 and in any modification of that license. The criteria at a minimum shall comply with criteria adopted under the atomic energy act of 1954, 42 U.S.C. 2011 to 2296, and regulations pertaining to licensing requirements for land disposal of waste under 10 C.F.R. 61.1 to 61.81 and shall require that the isolation distance between the disposal unit and adjacent property lines be at least 3,000 feet.

(2) Shallow land burial shall not be permitted. Acceptable disposal technologies shall be limited to above and below ground canisters or above and below ground vaults or both. The criteria shall also include provisions for monitoring at

the disposal site and within the disposal unit and provisions for the recoverability of waste that has been disposed of in the disposal site

Sec 13724 (1) If this state is a member of a compact the department shall obtain from each compact member a list of generators carriers processors and collectors who hold permits to generate transport process or collect waste in each compact member state The department shall also obtain an updated list of the generators carriers processors and collectors as necessary In addition the department shall obtain from each state that is a member of a compact with this state the state laws and rules that regulate generators carriers processors and collectors in each compact member state

(2) The department shall compile and maintain a list of all generators carriers processors and collectors who hold valid permits issued in this state under this part including updated information regarding any change in the status of a permit issued in this state under this part

(3) If this state is a member of a compact the department shall determine which compact member states have established and maintained to the satisfaction of the department a permitting and regulatory system including penalties and remedies that equals or exceeds the laws and rules of this state as they apply to generators carriers processors and collectors and the department shall prepare a master list that includes only the names of generators carriers processors and collectors who hold permits in those compact member states and the names of generators carriers processors and collectors who hold permits under this part

(4) The department shall permit the authority to receive waste only from a generator carrier processor or collector whose name is on the master list and who holds a valid permit issued in this state under this part or who holds a valid permit issued by a compact member state that has equivalent privileges in this state because the state in which that person generates carries processes or collects waste has established and maintains to the satisfaction of the department a permitting and regulatory system including penalties and remedies that equals or exceeds the laws and rules of this state as they pertain to generators carriers processors and collectors If this state is a member of a compact a compact member state that establishes and maintains a permitting and regulatory system that the department determines equals or exceeds this state s system as provided in subsection (3) shall by accepting equivalent privileges in this state as provided in this subsection give its consent to the requirements of this part the rules promulgated under this part and the provisions of the low level radioactive waste authority act In addition each of the compact member states shall be considered to have consented to share with this state and any other compact member states the expenses incurred in the construction operation site closure and stabilization postclosure observation and maintenance and institutional control of the disposal site and liabilities incurred as a result of the locating of the disposal site in this state

(5) A carrier processor or collector whose primary place of business is in this state shall be eligible to seek a permit from the department under this part to transport process or collect waste in this state A carrier processor or collector whose primary place of business is in a state that is not a compact member state shall be eligible to seek a permit from the department under this part to transport process or collect waste generated in this state The department shall issue a permit only to a generator who generates waste in this state

Sec 13725 (1) After the issuance of a construction and operating license for a disposal site under this part a person shall not generate waste in this state unless the person holds a generator s permit issued under this section The department shall assign an identification number to each generator who is issued a permit or who has been granted equivalent privileges in this state under section 13724

(2) A generator s permit shall include requirements as provided in this part and any rules promulgated under this part in the low level radioactive waste authority act and conditions that are equivalent to applicable federal requirements Other conditions as necessary and provided by law may be imposed after the department has submitted to the governor and the legislature the written recommendations required under section 13707(2) A generator s permit is valid for 3 years after the date of issuance

(3) Upon receipt of the application and a fee as required in subsection (6) the department shall issue or renew a generator s permit if it determines that the generator meets the requirements of this part

(4) An application for a generator s permit shall contain information required by the department to implement and enforce this part including all of the following

(a) The estimated quantities and types of waste generated

(b) The procedures and methods to be used for responding to a release of waste

(c) The location and use of storage and transfer facilities if any

(5) A generator s permit is not transferable and shall state with particularity the persons and real or personal property to which it applies

(6) Each person who submits an application for a generator s permit or permit renewal in this state under this section shall pay a permit application fee of \$500 00

(7) If a generator requests modification of a generator's permit or if the director determines that modifications are necessary to conform to the requirements of this part, the director may invoke permit modifications which the director considers necessary and may specify the time required to complete the modifications. The director may prescribe a fee not to exceed \$500.00 for administrative costs associated with the processing of a modification of a generator permit.

(8) The department shall automatically issue a generator's permit to an applicant who makes an initial application for a generator's permit under this part if that person holds a valid permit or other authorization to generate waste issued by the nuclear regulatory commission at the time of the initial application. A person granted a generator's permit under this subsection is subject to all the applicable provisions of this part, rules promulgated under this part, and the provisions of the permit.

Sec. 13727 (1) Except as otherwise provided in section 13726(2), a person shall not transport waste in this state after the issuance of a construction and operating license for a disposal site under this part unless the person holds a carrier's permit issued under this section or issued by a state that has been granted equivalent privileges in this state under section 13724. The department shall assign an identification number to each carrier who is issued a permit or who has equivalent privileges in this state under section 13724.

(2) A carrier's permit shall include requirements as provided in this part and in any rules promulgated under this part in the low level radioactive waste authority act and conditions that are equivalent to applicable federal requirements. Other conditions as necessary and provided by law may be imposed after the department has submitted to the governor and the legislature the written recommendations required under section 13707(2). A carrier's permit is valid for 3 years after the date of issuance.

(3) Upon receipt of the application and fee required in subsection (7), the department shall issue or renew a carrier's permit if it determines that the carrier meets the requirements of this part.

(4) An application for a carrier's permit shall contain information required by the department to implement and enforce this part, including all of the following information:

- (a) The estimated quantities and types of wastes to be transported;
- (b) The procedures and methods to be used for responding to a release of waste;
- (c) The location and use of storage and transfer facilities, if any.

(5) As a condition of a carrier's permit from this state, each vehicle used by a carrier to transport waste shall be registered and inspected by the department of state police annually to insure compliance with applicable state and federal law. The department of state police may collect a fee of \$200.00 for each vehicle that is inspected. The department of state police shall supply the carrier with a vehicle tag for each vehicle registered under this subsection. The vehicle tag shall be displayed by the carrier on each registered vehicle.

(6) A carrier's permit is not transferable and shall state with particularity the persons and real or personal property to which it applies.

(7) Each person who submits an application for a carrier's permit or permit renewal in this state under this section shall pay a permit application fee of \$500.00.

(8) If a carrier requests modification of a carrier's permit or if the director determines that modifications are necessary to conform to the requirements of this part, the director may invoke permit modifications which the director considers necessary and may specify the time required to complete the modifications. The director may prescribe a fee not to exceed \$500.00 for administrative costs associated with the processing of a modification to a carrier permit.

(9) The department, with the assistance of the department of state police and the state transportation department, shall specify the routes available in this state for the transportation of waste.

Sec. 13729 (1) Except as otherwise provided in section 13726(2), a person shall not collect waste for disposal in this state after the issuance of a construction and operating license for a disposal site under this part unless the person holds a collector's permit issued under this section or issued by a state that has been granted equivalent privileges in this state under section 13724. The department shall assign an identification number to each collector who is issued a permit or who has equivalent privileges in this state pursuant to section 13724.

(2) A collector's permit shall include requirements as provided in this part and any rules promulgated under this part in the low level radioactive waste authority act and conditions that are equivalent to applicable federal requirements. Other conditions as necessary and provided by law may be imposed after the department has submitted to the governor and the legislature the written recommendations required under section 13707(2). A collector's permit is valid for 3 years after the date of issuance.

(3) Upon receipt of the application and fee required in subsection (6), the department shall issue or renew a collector's permit if it determines that the collector meets the requirements of this part.

(4) An application for a collector's permit shall contain information required by the department to implement and enforce this part, including all of the following information:

- (a) The estimated quantities and types of wastes to be collected
- (b) The procedures and methods to be used for responding to the release of waste
- (c) The location and use of storage and transfer facilities if any
- (5) A collector's permit is not transferable and shall state with particularity the persons and real or personal property to which it applies
- (6) Each person who submits an application for a permit or permit renewal in this state under this section shall pay a permit application fee of \$500.00
- (7) If a collector requests modification of a collector's permit or if the director determines that modifications are necessary to conform to the requirements of this part, the director may invoke permit modifications which the director considers necessary and may specify the time required to complete the modifications. The director may prescribe a fee not to exceed \$500.00 for administrative costs associated with the processing of a modification to a collector permit.

Sec. 13731 (1) Except as otherwise provided in section 13726(2), a person shall not process waste in this state after the issuance of a construction and operating license for a disposal site under this part unless the person holds a processor's permit issued under this section or issued in a state that has been granted equivalent privileges in this state under section 13724. The department shall assign an identification number to each processor who is issued a permit or who has equivalent privileges in this state pursuant to section 13724.

(2) A processor's permit shall include requirements as provided in this part and in any rules promulgated under this part in the low level radioactive waste authority act and conditions that are equivalent to applicable federal requirements. Other conditions as necessary and provided by law may be imposed after the department has submitted to the governor and the legislature the written recommendations required under section 13707(2). A processor's permit is valid for 3 years after the date of issuance.

(3) Upon receipt of the application and fee in subsection (6), the department shall issue or renew a processor's permit if it determines that the processor meets the requirements of this part.

(4) An application for a processor's permit shall contain information required by the department to implement and enforce this part, including all of the following information:

- (a) The estimated quantities and types of waste to be processed
- (b) The procedures and methods to be used for responding to the release of waste, including an analysis of the potential pathways for a release of waste to the environment and the potential impact of such a release
- (c) The location and use of storage and transfer facilities if any
- (5) A processor's permit shall not be transferable and shall state with particularity the persons and real or personal property to which it applies

(6) Each person who submits an application for a processor's permit or permit renewal under this section shall pay a permit application fee of \$500.00.

(7) If a processor requests modification of a processor's permit or if the director determines that modifications are necessary to conform to the requirements of this part, the director may invoke permit modifications which the director considers necessary and may specify the time required to complete the modifications. The director may prescribe a fee not to exceed \$500.00 for administrative costs associated with the processing of a modification to a processor permit.

Sec. 13740 (1) The department shall deposit all receipts from civil fines and fees collected pursuant to this part and from judgments, settlements, and any other payments collected pursuant to this part in the state treasury to the credit of the general fund.

(2) Funds credited to the general fund as required by this section shall be appropriated for the purposes provided in this section and if insufficient funds are available or appropriated from the general fund, the department may seek appropriations by the legislature from the low level radioactive waste management fund for purposes authorized by this part, including but not limited to any of the following:

(a) Hiring personnel and any other operating and contingent expenses necessary for the proper administration of this part to fulfill the state's obligations under the low level radioactive waste policy act, Public Law 96-573, 42 U.S.C. 2021b to 2021d, and if this state is a member of a compact to assure adequate involvement by this state in any compact activities and responsibilities.

(b) Regulatory costs, including but not limited to the costs of promulgating and enforcing administrative rules if this state enters into an agreement with the United States nuclear regulatory commission as provided in section 13707.

(c) Contracting with any person or vendor for the purpose of carrying out this part and the rules promulgated under this part.

(d) Taking any actions necessary to protect the public health, safety, and welfare and the environment from actual or threatened harm from activities regulated under this part.

(3) This section shall not be construed to limit the financial responsibilities of a person who holds a permit or license under this part or establish or imply any liability on the part of the state

(4) If expenditures are required as a result of a release or threatened release the department the attorney general on behalf of the department the department of natural resources and the authority shall seek to obtain funds from a responsible party including a surety bond secured trust fund or other instrument mechanism fund or liability insurance held by that party

This act is ordered to take immediate effect

Secretary of the Senate

Co Clerk of the House of Representatives

Approved

Governor